The purpose of this briefing is to summarise the licensing process for (i) credit institutions (banks); (ii) MiFID investment firms; (iii) AIFMs; (iv) (re)insurance undertakings; and (v) payment institutions in Ireland, together with some of the key issues for licence applicants.

The regulator responsible for licensing and supervising all of the institutions above in Ireland is the Central Bank of Ireland (the CBI). The European Central Bank (the ECB) is also involved in the licensing process for credit institutions under the Single Supervisory Mechanism.

A key issue for all applicant firms is what degree of substance they will require in Ireland in order to meet the CBI’s "mind and management" test. There is no black and white test and no set formula to apply. Each application will be considered on its merits on a case-by-case basis and so we recommend that this question is at the top of the agenda for any initial meeting with the CBI.

This document contains a summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

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1. In respect of qualifying investor alternative investment funds (QIAIFs) only, the AIFM may be a “registered” or “sub-threshold” AIFM where the AIFM has assets under management below the de minimis thresholds prescribed in AIFMD. Under Irish regulation, registered AIFMs are only subject to certain requirements of AIFMD, including those dealing with annual reports and investor disclosure, but must be Irish and are not permitted to use the AIFM passport or market the AIF on a passported basis across the EU. There is a separate, simplified, process for registration as a “registered” or “sub-threshold” AIFM.
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<tr>
<td>2. Timetable</td>
<td>» Depends on the specific circumstances of the application but assume around 12-18 months (including preparation time) at present</td>
<td>» Depends on complexity of application (level 1 vs level 2 application – see the Guidance Note) but assume around 9-12 months (including preparation time) for a level 2 application, and 6-9 months for a level 1 application at present</td>
<td>» Depends on the specific circumstances of the application but assume around 4-6 months (including preparation time) at present</td>
<td>» Depends on the specific circumstances of the application but assume around 6 – 9 months (including preparation time) at present. See Guidance Note above.</td>
<td>» Depends on the specific circumstances of the application but assume around 6-9 months (including preparation time) at present</td>
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<tr>
<td>3. Costs</td>
<td>» No CBI filing fee</td>
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<td>» No CBI filing fee</td>
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<td>4. CBI approach to process</td>
<td>» Process is iterative and involves: (i) preliminary meeting with the CBI; (ii) provision of a draft application; (iii) responses to CBI comments on application materials; and (iv) submission of final application before determination is made by the ECB</td>
<td>» Process is iterative and involves: (i) pre-application meeting to discuss “key facts document”; (ii) submission of application; and (ii) responses to CBI comments on application materials before determination is made</td>
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5. Substance

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<td>» “Mind and management” will have to be located in Ireland, such that day-to-day decision making and senior management/control functions are located in Ireland (for subsidiaries of international groups, the CBI appreciates that direction can be set at group level and that employees and management can have dotted line reporting lines outside the legal entity)</td>
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<td>» No quantitative thresholds on staff numbers but real substance in Ireland will be required</td>
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<td>» No quantitative thresholds on staff numbers but staffing should be appropriate to the business to be undertaken in order to comply with Solvency II requirements</td>
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<td>» Employees do not need to be permanently resident in Ireland if they spend sufficient time during the working week in Ireland</td>
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- **“Designated persons”** must be senior people with expertise in the managerial function they are managing but need not be a director or Irish resident. If the entity is assigned a risk rating of “low”, at least three of the managerial functions need to be performed by two “designated persons” who are EEA resident.
- The “designated persons” must be reasonably available to meet the CBI at short notice.
- The AIFM cannot be a “letter box entity”. It is not possible for the AIFM to delegate all portfolio and risk management functions; however, the AIFM will be able to delegate certain portfolio and risk management functions.
- Employees do not need to be permanently resident in Ireland if they spend sufficient time during the working week in Ireland.

- Governance and reporting structures should adequately deal with responsibility for the activities undertaken by the entity in light of Solvency II requirements. There can be some flexibility as to how this can be achieved by way of committee and management structures.
- Persons responsible for the risk-management, compliance, internal audit and actuarial functions must be identified.

- No quantitative thresholds on staff numbers but real substance in Ireland will be required.
- Employees do not need to be permanently resident in Ireland if they spend sufficient time during the working week in Ireland.
### 6. Corporate Governance

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<td>At least one director must be EEA resident (or an insurance bond must be provided (€25,000))</td>
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<td>The AIFM must have a minimum of two directors that are Irish residents and half of the directors must be EEA resident</td>
<td>At least one director must be EEA resident (or an insurance bond must be provided (€25,000))</td>
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<td></td>
<td>CBI requires that a majority of the directors are reasonably available to the CBI at short notice</td>
<td>CBI requires that at least two of the directors are reasonably available to the CBI at short notice (one of which must be an INED or the Chairman)</td>
<td>CBIs INED must take on the organisational effectiveness role to monitor how the AIFM is organised and resourced, and cannot also be a “designated person” and assume any of the key managerial functions</td>
<td>CBI requires that the majority of the directors are reasonably available to the CBI at short notice</td>
<td>CBI will require a balance of executive and non-executive directors and at least one independent non-executive director</td>
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<td>CBI has issued detailed Corporate Governance Requirements for Credit Institutions, CRD IV requirements and EBA requirements apply as well</td>
<td>CBI has consulted on detailed corporate governance requirements for investment firms (see here) but has not issued a final code. CRD IV requirements apply to in-scope investment firms</td>
<td>No other specific quantitative requirements</td>
<td>No set requirement on number of directors – but CBIs INED will require a majority of non-executive directors and at least one independent director, and that at least one director be an employee, partner or director of the investment manager</td>
<td>No set requirement on number of directors – but CBIs INED will require a majority of non-executive directors and at least one independent director (there are exceptions in group situations, albeit the CBI will require at least two independent non-executive directors in all cases)</td>
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<td>At least five directors are required and CBI will require a majority of independent non-executive directors (there are exceptions in group situations, albeit the CBI will require at least two independent non-executive directors in all cases)</td>
<td>At least three directors are required and CBI will require a majority of independent non-executive directors (there are exceptions in group situations, albeit the CBI will require at least one independent non-executive director (and two in some cases))</td>
<td>The board of the AIFM is responsible for the carrying out of the six key managerial functions (see above)</td>
<td>CBI requires that directors must be able to devote sufficient time to the role</td>
<td>Systems and controls requirements are based on Solvency II requirements</td>
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<td>7. Outsourcing</td>
<td>» Critical/ significant outsourcing will require CBI pre-notification</td>
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<td>» Appropriate oversight will be required per EBA outsourcing requirements (including regular audits/ reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements)</td>
<td>» Appropriate oversight will be required per MiFID requirements (including regular audits/ reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements)</td>
<td>» Appropriate oversight will be required per AIFMD requirements (including regular audits/ reviews and MI provided on the delegated/ outsourced activities, plus detailed outsourcing agreements)</td>
<td>» Appropriate oversight will be required per Solvency II requirements (including regular audits/ reviews, access provisions, plus detailed outsourcing agreements which include specific Solvency II requirements)</td>
<td>» Appropriate oversight will be required per EBA outsourcing requirements (including regular audits/ reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements)</td>
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<td>» Firm remains responsible for any outsourced activity and will be expected to retain/ maintain in-house expertise to supervise/ manage the outsourcing</td>
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<td>» Outsourcing cannot result in the firm’s regulated activities being “hollowed out”</td>
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### 8. Board/ Senior Managers

- CBI’s fitness and probity regime will apply to certain controlled functions, with persons in “pre-approval controlled functions” (e.g., directors, CEO, CFO, CRO, head of compliance, etc.) requiring approval before role can be commenced (regime is similar to the UK approved persons regime). The ECB is responsible for the fitness and probity assessments of the management board of all credit institutions applying for authorisation.
- No equivalent to UK senior managers regime.

### 9. Regulatory Approach

- CBI is relatively open to discussion on key issues – regulatory approach is “risk-based” such that the most intensive/intrusive regulation is focused on high-risk firms.
- CBI is relatively open to discussion on key issues – regulatory approach is “risk-based”.
- Depending on risk-rating of the firm, it may not have a dedicated point of contact at the CBI.
- No equivalent to UK senior managers regime.

### 10. Other Issues

- COB rules/ Prudential rules: based on EU directive requirements with little/no super-equivalence.
- Tax: 12.5% corporate tax rate on Irish trading income and dividends from trading subsidiaries. Double taxation treaties in place with over 70 countries.
- Employment law: very similar to UK.
- Data protection: very similar to UK.
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LICENSING PROCESS FOR CREDIT INSTITUTIONS, MIFID INVESTMENT FIRMS, AIFMS, (RE)INSURANCE UNDERTAKINGS AND PAYMENT INSTITUTIONS IN IRELAND