



Matheson

Establishing a Qualifying Investor AIF in Ireland

Best Alternative Investments Law Firm Europe 2016, Wealth and Finance International

Most Innovative European Fund Law Firm 2016, Global Fund Awards
Fund Lawyer of the Year 2016, Global Fund Awards

Financial Services (International) Investment Funds Deal of the Year 2014, 2015 and ICAV Deal of the Year 2016, Finance Dublin

European Law Firm of the Year 2015, The Hedge Fund Journal

Best AIFMD Law Firm in Europe 2014 & 2015, Wealth and Finance International

Best Funds Lawyer Europe 2014, ETF.com

Financial Times 2012 - 2015, Matheson is the only Irish law firm commended by the Financial Times for innovation in corporate law, finance law and corporate strategy.

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 London, New York and Palo Alto. More than 600 people work across our four offices, including 74 partners and tax principals and over 350 legal and tax professionals.

Our strength in depth is spread across more than 20 distinct practice areas within the firm, including asset management and investment funds, aviation and asset finance, banking and financial services, commercial litigation and dispute resolution, corporate, healthcare, insolvency and corporate restructuring, insurance, intellectual property, international business, structured finance and tax. This broad spread of expertise and legal know-how allows us to provide best-in-class advice to clients on all facets of the law.

Our dedication to client service and excellence has become our hallmark as a firm, and is acknowledged by both our clients themselves and the world's leading legal directories and publications.

The Asset Management and Investment Funds Group

Matheson is the number one ranked funds law practice in Ireland, acting for 28% of Irish domiciled investment funds by assets under management as at 30 June 2015. Led by 11 partners, the practice comprises 50 asset management and investment fund lawyers and professionals in total. The group's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by Chambers Europe, the European Legal 500 and the IFLR1000, and the team is specifically recognised for its abilities with respect to complex mandates.

We have been named the Best AIFMD Law Firm in Europe 2015 and 2014 by Wealth & Finance International and have been awarded the Financial Services (International) ICAV Deal of the Year 2016 and Investment Funds Deal of the Year 2015 and 2014 by Finance Dublin. Matheson was also awarded European Law Firm of the Year 2015 from the Hedge Fund Journal. This is the second time we have received this award, reflecting the international recognition of our contribution to the European hedge fund sector. We are the only Irish law firm ever to win the award of European Advisor of the Year from Funds Europe.

With our asset management legal and regulatory advisers working alongside Matheson taxation, structured finance 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.

Establishing a Qualifying Investor Fund in Ireland

The purpose of this brochure is to provide an overview of qualifying investor alternative investment funds ("QIAIFs") and the key steps in establishing a QIAIF in Ireland.

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1 Overview of a QIAIF

1.1 Introduction

The qualifying investor alternative investment fund (“QIAIF”) is one of the two regulated alternative investment fund structures introduced upon the implementation of the Alternative Investment Fund Managers Directive (“AIFMD”) in Ireland¹. The QIAIF retains most of the key features of the pre-AIFMD qualifying investor fund (“QIF”) in terms of legal forms, qualifying investors, permitted investments and relevant service providers.

The QIAIF has been one of the most successful fund structures in Ireland to date, its success mirroring the market appetite for a sophisticated regulated product facilitating hedge fund and other alternative investment strategies. According to figures released by the Central Bank of Ireland (the “Central Bank”) in December 2015, the number of QIAIFs had reached an all-time high of 1,961 funds and assets had reached a new peak of €369 billion – increasing 16% during 2015 and 35% in 2014, following the implementation of the AIFMD.

The QIAIF is a well-established, regulated investment fund vehicle which has the characteristics and flexibility of typical hedge fund products, while authorised and regulated by the Central Bank. As the pre-existing QIF already complied with the majority of the requirements of the AIFMD, Ireland was AIFMD-ready in advance of the AIFMD transposition deadline. Establishing an Irish QIAIF is therefore an efficient route to AIFMD compliance for both EU and non-EU alternative investment funds managers.

QIAIFs benefit from a fast-track authorisation process meaning that a QIAIF can be authorised by the Central Bank within 24 hours of filing the appropriate documentation. Like its QIF predecessor, the QIAIF product will be attractive for fund managers who are considering the re-domiciliation of previously unregulated funds to Ireland under the Irish re-domiciliation provisions. These provisions facilitate a straightforward migration process to Ireland for investment fund companies from the Cayman Islands, British Virgin Islands, Jersey, Guernsey, Bermuda and the Isle of Man where the fund is migrating as an investment company and the Cayman Islands, British Virgin Islands and Jersey where the fund is migrating as an ICAV.

The purpose of this briefing note is to summarise the key features of a QIAIF. For further information on any aspect of this note, please contact a member of the Asset Management and Investment Funds Group at Matheson, at the contact details set out at the end of this publication.

1.2 The Alternative Investment Fund Managers Directive

QIAIFs are indirectly regulated by the AIFMD, which imposes obligations at the level of the alternative investment fund manager (“AIFM”) that impact at the level of the AIF. The AIFMD came into effect on 22 July 2013, imposing harmonised conditions and requirements on the structure and operation of AIFMs, in return for which authorised AIFMs are, for the first time, permitted to avail of a passport to market alternative investment funds (“AIFs”) to professional investors across the EU and to manage AIFs domiciled in member states other than the AIFM’s home member state.

The AIFMD requires that each AIF must have an AIFM. The AIFM may be an EU or non-EU entity; however non-EU AIFMs will not be able to avail of the AIFMD marketing passport unless and until the European Commission decides to adopt legislation extending the AIFMD passport to non-EU AIFMs. The AIFMD imposes a number of obligations on an authorised AIFM, including detailed organisational requirements, minimum capital requirements and requirements concerning remuneration policies and practices. The AIFM must ensure that each AIF appoints a depositary, which will be subject to the depositary regime set out in the AIFMD, including strict liability in the event of a loss of financial instruments held in custody. The AIFMD also contains detailed provisions as to the conditions which will apply when an AIFM delegates any of its functions.

For more information on the AIFMD, please see our dedicated [AIFs webpage](#).

1.3 Approval of the AIFM

A QIAIF will, pursuant to the AIFMD, be required to appoint an external AIFM or, in the case of a QIAIF established as an ICAV or investment company, such fund may be a self-managed AIF. The AIFM will need to be approved by the Central Bank in advance of the QIAIF application for authorisation. Further information on the authorisation of an AIFM is set out in Section 4 below.

1.4 The Self-managed QIAIF as a Marketing Solution for non-EU AIFMs

Although non-EU AIFMs will not be able to avail of the AIFMD marketing passport until a decision is made by the European Commission as to whether to extend the passport, the non-EU AIFM could establish a self-managed QIAIF, which may itself apply for authorisation as the AIFM (in effect, a self-managed AIF). The QIAIF may delegate its investment management functions to an EU or non-EU investment manager. The investment manager would not be the AIFM and therefore would not have to comply in full with the provisions of the AIFMD. The self-managed investment company (“SMIC”) is a self-managed fund structure which was already firmly embedded within the Irish regulatory framework prior to the introduction of the AIFMD.

¹ The second fund type is the retail alternative investment fund or “RAIF”.

1.5 Who May Invest in a QIAIF?

The following are the categories of qualifying investor that may invest in a QIAIF:

- an investor who is a professional client under the Markets in Financial Investments Directive (“MiFID”); or
- 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
- 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.

Certain investors are exempt from the above criteria and the minimum subscription requirement, including the management company (where applicable) or general partner of an investment limited partnership; a company appointed to provide investment management or advisory services to the QIAIF; and a director or employee of the management company, general partner or company appointed to provide investment management or advisory services.

1.6 Speed to Market - Authorisation in a Day

A QIAIF is capable of being authorised within 24 hours of a single filing of documentation with the Central Bank. QIAIFs will be authorised by the Central Bank on receipt of a complete filing application provided that a confirmation is received in relation to the contents of the relevant documentation, and the parties involved (ie, the AIFM, directors and service providers) have been approved in advance of the application and meet the necessary authorisation criteria.

Under the QIAIF fast-track procedure, the Central Bank does not engage in a detailed prior review of any of the key fund documents but instead relies on confirmations provided by the directors / AIFM and legal advisers of the QIAIF to ensure compliance with applicable Irish regulations. Compliance by the key fund documents is also demonstrated by the completion of application forms that must be submitted with each new fund application. This procedure represents an extension of developments in the regulatory environment over the last few years, which has seen the Central Bank step back from the detailed prior review of many ancillary fund documents (circulars to investors, investment management agreements, administration agreements, prime broker agreements, sub-custody agreements and paying agent agreements) by placing reliance on completed application forms and written confirmations provided by the legal advisers and other service providers to a fund. The Central Bank does undertake post-authorisation spot checks on applications, and if a QIAIF is not in compliance with the Central Bank’s requirements, difficulties may be experienced by the applicant should it wish to avail of the fast-track authorisation regime for further QIAIF launches.

Further information on the authorisation procedure is set out in Section 4 below.



2 Legal Forms of QIAIF

2.1 Introduction

The choice of an appropriate vehicle through which a QIAIF will be constituted will depend on a number of factors. There are several legal forms available for the establishment of a QIAIF in Ireland and a summary of the key features of these legal forms is set out below.

A QIAIF may be established through any one of the following legal structures:

- ICAV;
- investment company;
- unit trust;
- common contractual fund (“CCF”); or
- investment limited partnership (“ILP”).

Unit trusts and CCFs are required to appoint a management company (which may or may not be the designated AIFM).

We provide below an overview of QIAIFs established as ICAVs, investment companies or as unit trusts, as these are the most commonly used investment fund vehicles. Please see our Ireland as an International Fund Domicile brochure on our website for information on CCFs and ILPs.

2.2 The ICAV

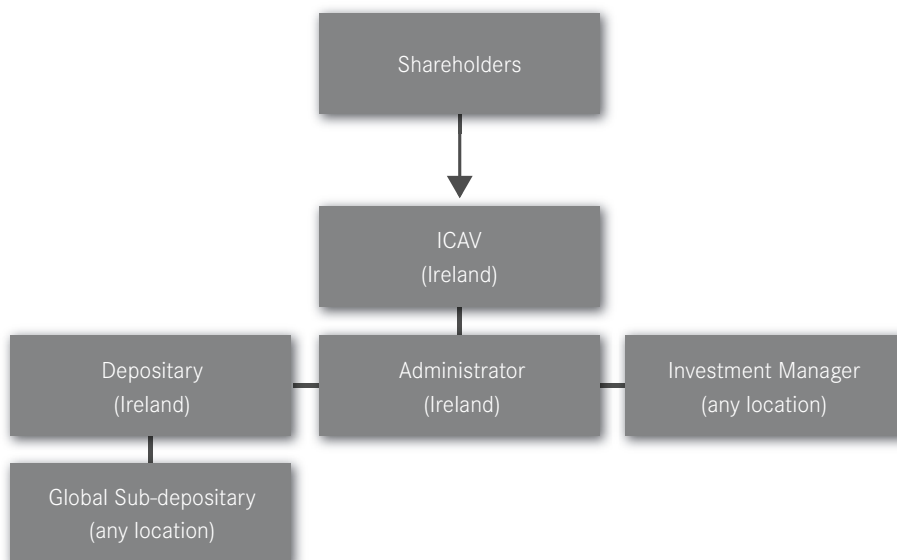
A new corporate fund structure for Irish investment funds was introduced in March 2015, called the ICAV (the Irish Collective Asset-management Vehicle). The ICAV sits alongside the public limited company (“plc”) structure, which has been the most successful and popular of the existing Irish fund structures to date. The new structure represents a modernising and streamlining of the investment company fund structure and is designed specifically with the needs of investment funds in mind.

The ICAV is registered (incorporated) with the Central Bank and provides a tailor-made fund vehicle which is available as a corporate structure to both UCITS and AIFs. 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.

The ICAV is governed by the Irish Collective Asset-management Vehicle 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 other collective investment schemes, the ICAV may either be managed by an external management company or be a self-managed entity.

The ICAV offers a range of potential cost-cutting benefits, which mean that the ICAV is expected to become the vehicle of choice, 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 an AIF 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. Since the introduction of the ICAV, there has been a growing interest in establishing AIFs as ICAVs in preference to the other available legal structures.

ICAV with no Irish Domiciled Management Company



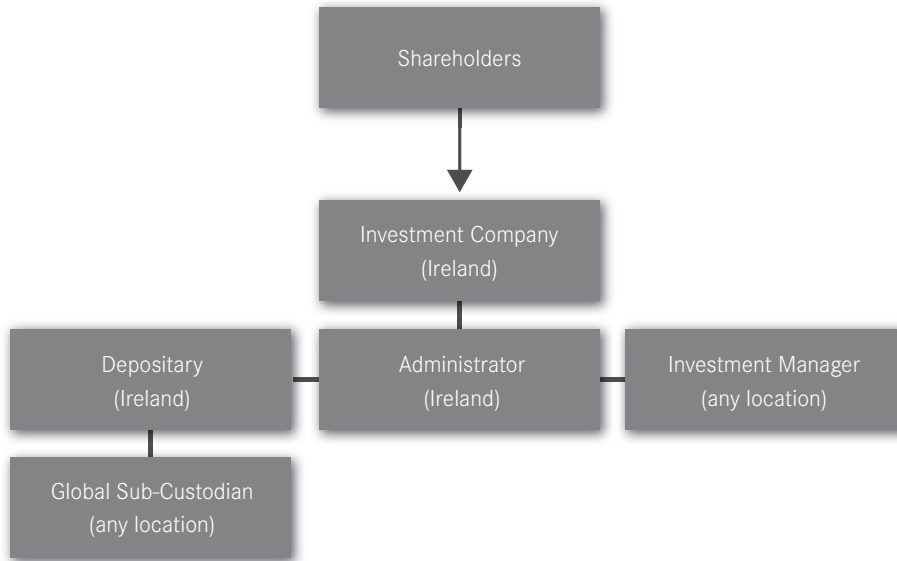
2.3 Investment Company

As a corporation, an investment company is a separate legal entity, managed and controlled by its board of directors, which can enter into contracts in its own name. 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. A QIAIF established as a company may be self-managed, or appoint a management company. It must have as its aim the spreading of investment risk.

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 law, QIAIFs established as investment companies are governed by Part 24 of the Companies Act 2014 and by the AIF Rulebook issued by the Central Bank. The memorandum and articles of association form the constitutional documents of the company. Liability of shareholders in a QIAIF established as an investment company is limited.

A typical investment fund company structure is illustrated below.

Investment Company with no Irish Domiciled Management Company

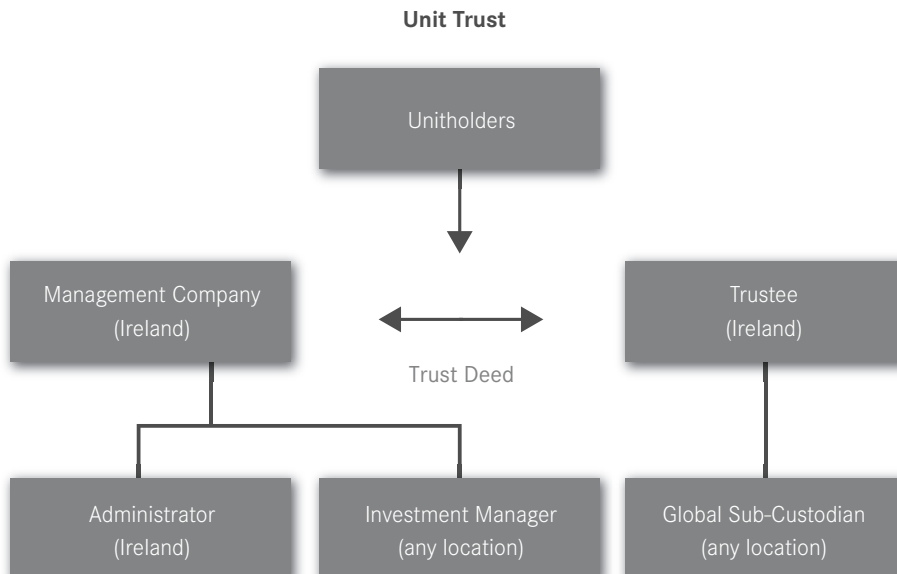


2.4 Unit Trust

A unit trust is created by a trust deed entered into by the trustee and the manager of the trust and, as mentioned above, the use of a management company in this structure is a necessity. This is a contractual arrangement and therefore 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 on behalf of the 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.

As distinct from a QIAIF formed as an investment company, there is no requirement for a QIAIF unit trust to operate on the principle of risk spreading. It should also be noted that references to the board of directors in the context of a unit trust are references to the board of directors of the manager of the unit trust. The constitutional document of the trust is the trust deed.

A typical unit trust structure is illustrated below.



2.5 ICAVs v Investment Companies

With respect to the features of ICAVs which may be regarded as comparatively attractive relative to an investment company structure, these include the following:

- an ICAV can dispense with the requirement to hold an annual general meeting of its shareholders, whereas legislation requires that an investment company must hold a general meeting for its shareholders annually;
- it is easier to make changes to the instrument of incorporation of an ICAV, as no shareholder vote is required where the depositary certifies that the changes do not prejudice investors' interests, whereas a shareholder vote is required even when non-material changes are to be made to the memorandum and articles of association of an investment company;
- for US tax purposes, an ICAV can "check the box" whereas an investment company cannot;
- in distinction to investment companies, ICAVs do not have a requirement to operate on the basis of spreading investment risk; and
- ICAVs are permitted to prepare separate accounts at sub-fund level, ensuring that investors in a single sub-fund of an umbrella with multiple sub-funds only receive information that is relevant to them and reducing the costs and time spent by managers in compiling accounts to be provided to shareholders.

2.6 ICAVs v Unit Trusts

The unit trust offers some similar benefits to those offered by the ICAV, in that a unit trust is not required to hold an annual general meeting, can make non-material changes to its trust deed without a unitholder vote, can check-the-box for US tax purposes, and is not required to spread risk. It may also be the case that the segregation of liability within a unit trust structure may be less prone to challenge in foreign jurisdictions than segregation of liability in an ICAV or investment company structure. Asian investors are also generally more familiar with the unit trust structure.

The comparative benefits of incorporating an ICAV relative to a unit trust structure may be summarised as follows:

- the ICAV offers a corporate structure, familiar to most promoters and investors;
- a unit trust must appoint a manager (with appropriate capitalisation), whereas an ICAV may opt to be "self-managed", and dispense with the appointment of a separate management company;
- allied to the necessity to appoint a separate manager to a unit trust, in some instances counterparties have to be educated as to the power and authority of the manager to act on behalf of the unit trust;
- as the split between legal and beneficial ownership associated with unit trusts is a common law rather than a civil law concept, this may give rise to relative difficulties in selling unit trusts within civil law countries; and
- given the general tendency for the trustee of a unit trust to push back on charges being registered against them in relation to the unit trust, this can have the effect of rendering the negotiation of security arrangements more difficult in the unit trust framework than is the case with an ICAV.



3 Key Features of a QIAIF

3.1 Permitted Investments and Leverage

The rules applicable to a QIAIF are set out in the relevant investment funds legislation and in the Central Bank's AIF Rulebook. The minimal investment restrictions imposed on a QIAIF mean that QIAIFs can have sophisticated investment strategies. Accordingly, QIAIFs can invest in instruments traded on and off exchanges, multiple instruments issued by the same issuer, deposits with credit institutions, other collective investment schemes and can enter into short selling, borrowing or dealing facilities. However, certain disclosures must be made in the fund prospectus depending on the likely investment strategies of the fund.

Diversification Requirements

Irish company law requires that investment companies operate on the basis of risk spreading. As mentioned above, there is no corresponding requirement in the context of ICAVs or unit trusts.

Distribution Requirements

The Central Bank does not require funds to distribute income and accordingly funds can be established either as distributing funds or accumulating funds. Where a fund distributes income, it is free to determine how it will do this but must disclose this in the prospectus.

Asset Types

As a QIAIF, there are no restrictions on the types of assets in which the fund can invest.

Leverage

As mentioned, there are no restrictions on leverage. AIFMs are required to set a maximum level of leverage which they may employ on behalf of each QIAIF they manage.

Publication of Issue and Redemption Prices

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

3.2 Enhancements Introduced Ancillary to AIFMD Implementation

In revising its rules to take account of the requirements of the AIFMD, the Central Bank took the opportunity to amend the rules to introduce a number of improvements for AIFs.

Promoter Regime

Promoters of AIFs launched after 22 July 2013 do not have to seek approval from the Central Bank.

QIAIFs Investing More Than 50% in Any One Unregulated Fund

The Central Bank retained its prohibition on QIAIFs investing more than 50% in any one unregulated investment fund, but amended the circumstances in which this prohibition does not apply. A QIAIF can dis-apply this prohibition where it has a minimum subscription amount of €500,000 and where its prospectus contains a detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the QIAIF and its AIFM but which do not apply to the underlying unregulated investment fund and its manager.

Side Pockets

QIAIFs can purchase assets and immediately place these assets in side pockets. The Central Bank does not place a limit on the amount of assets which can be side pocketed in this manner.

Initial Offer Periods for Funds Investing in Illiquid Assets

QIAIFs investing in illiquid assets such as real estate and private equity may have initial offer periods of up to two years and six months. (The offer period was previously limited to one year.)

Fair Treatment of Investors

The AIF Rulebook introduced some useful flexibility for QIAIFs insofar as it provides for the concept of "fair treatment" between different share classes. This replaces the previous concept of "equal treatment" and facilitates some structures which had been previously sought by the market, including share classes with different dealing frequencies and / or different rights to information.

Verification of Performance Fees

Verification of performance fees can now either be carried out by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary. Previously, only the depositary could verify performance fees.



4 Overview of Authorisation Process

4.1 Approval of the Central Bank

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.

4.2 AIFM

As noted above, a QIAIF will need to designate an AIFM that will need to be approved by the Central Bank in advance of the QIAIF application for authorisation. AIFMs are regulated under the AIFMD and the AIF Rulebook of the Central Bank. An AIFM may be fully authorised under the AIFMD or “registered”. Authorised AIFMs are subject to the full requirements of the AIFMD and are permitted to: (i) use the AIFM passport; and (ii) market the AIFs they manage throughout the EU using the AIFMD marketing passport. Registered AIFMs, on the other hand, are only subject to some of the AIFMD requirements relating to reporting to regulators but are not permitted to use either the AIFM passport or the passport for marketing AIFs. Where an AIFM manages assets of greater than €100 million - or €500 million in the case of closed-ended, unleveraged AIFs - it must apply for authorisation as an AIFM (an “above-threshold AIFM”).

QIAIFs may also designate a non-EU AIFM. Non-EU AIFMs are at present 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 market subject to the national private placement regimes in operation in each member state). Non-EU AIFMs may be permitted to apply for authorisation under the AIFMD, thereby availing of the AIFM passport and marketing passport, if the European Commission legislates to extend the passport to non-EU AIFMs and non-EU AIFs.

At the core of any application to be authorised as an AIFM is the requirement for a programme of activity. 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.

“Self-managed” AIFs

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 various requirements described above in this regard are applicable to them too. 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 use the AIF passport to market the AIF in other EU member states.

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 shall 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.

AIFM Authorisation

The shareholders, directors and managers of the AIFM must satisfy the Central Bank requirements on fitness and probity and possess sufficient experience in relation to the management of AIFs. In addition, the group structure of the AIFM must not prevent effective supervision by the Central Bank.

Where an above-threshold EU AIFM is designated, an application for authorisation as an AIFM must be made by submitting:

- (a) a completed application form signed by two directors of the applicant AIFM;
- (b) in the case of externally managed AIFMs, completed individual questionnaires in respect of:
 - each director and senior manager; and
 - each individual who has a direct or indirect holding of shares or other interest in the proposed AIFM, which represents 10% or more of the capital or voting rights in the AIFM, and any other individual who is in a position to exercise a significant influence over the management of the AIFM;
- (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under AIFMD;
- (d) information on the remuneration policies and practices of the AIFM;
- (e) information on arrangements made for the delegation and sub-delegation to third parties; and
- (f) a statement of responsibility.

4.3 Approval of Directors

The board of directors of Irish domiciled funds established as investment companies must include at least two Irish resident directors. The same requirement applies to management companies of Irish domiciled funds and general partners of ILPs.

All directors of Irish domiciled 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 on-line reporting system (“ORS”). Directors, whether previously approved or not, are required to complete an individual questionnaire (“IQ”) online on a Central Bank website dedicated to each structure.

The Central Bank does not prescribe the experience and expertise required of each director, however, the fitness and probity standards require that a director must:

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

The IQ includes a pre-formatted curriculum vitae section within the IQ form itself covering all appointments and positions held. The applicant is also required to disclose information in relation to personal details, qualifications and experience, other business interests, and any shareholdings held by them in the proposing entity. The applicant must also give the names of two referees (generally, the applicant’s two most recent employers) who are familiar with the applicant’s financial services activities who can be contacted by the Central Bank to verify information contained within the IQ.

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

4.4 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 QIAIF.

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 will also act as investment manager, there is no need for a separate investment manager application process; this is included as part of the AIFM approval process.

In determining the suitability for approval, the Central Bank relies on a detailed application form which must be completed and filed 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 and value of assets which the applicant has under discretionary management;
- curriculum vitae for the directors or relevant senior managers of the applicant;
- identity of the proposed administrator and depositary of the investment 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;
 - latest audited accounts of the applicant and its parent company (the Central Bank would generally expect an investment manager to have capital of €635,000); and
 - two references for the applicant.

It may be possible for the applicant to avail of a fast-track one week approval process where it holds an authorisation under MiFID implementing legislation in a member state of the European Economic Area or is a credit institution regulated within the European Economic Area 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 three to five weeks (the timing depends significantly on the speed which with responses to the Central Bank’s queries are provided).

4.5 Selection of Depositary and Administrator

QIAIFs 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 a QIAIF must comply with the depositary regime set out in the AIFMD and is responsible not only for the safe-keeping of the assets of the QIAIF and the settlement of trades, but also has oversight duties which require it to supervise the investment activities of the fund and to report to the shareholders or unitholders on an annual basis as to whether the fund has operated in accordance with its prospectus and the applicable regulations.

Administrator's Duties

The Central Bank has set out requirements governing the outsourcing of administrative services. Some of the key points regarding the outsourcing rules include the following: (i) administrators are not permitted to outsource core administration activities (defined as the final checking and release of net asset value calculation for dealing purposes and the maintenance of the shareholder register); (ii) outsourcing must 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.

4.6 QIAIF Authorisation and Documentation

As noted above in section 1, the approval procedure for QIAIFs is a streamlined one day process. 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 and the fund certifies that it complies with certain agreed parameters codified in the Central Bank's QIAIF application form. If all is in order, the Central Bank will issue its letter of authorisation on the following day.

It should be noted that, if it is the case that the QIAIF proposes to seek derogations from the general policies applicable to QIAIFs or should the QIAIF wish to utilise novel or other unusual features, the Central Bank expects that the applicant discuss these proposals in advance of submission of the authorisation application.

A list of documents to be prepared is set out at (i) to (xiii) below, which Matheson can prepare in conjunction with the relevant service providers while the Central Bank is reviewing the AIFM approval application and any director IQs. The parties responsible for production of draft documents are indicated in parenthesis below:

- (i) Central Bank application forms for the fund (Matheson);
- (ii) directors' letter of application for authorisation of the fund (Matheson);
- (iii) fund prospectus (and supplements as appropriate) (Matheson);
- (iv) certificate of incorporation for the fund where the QIAIF is established as an investment company (not required for unit trust) (Matheson);
- (v) instrument of incorporation where the QIAIF is established as an ICAV or memorandum and articles of association of the fund where the QIAIF is established as a company (Matheson) - or trust deed where the QIAIF is established as a unit trust (Matheson; Trustee);
- (vi) management agreement (Matheson);
- (vii) AIFM agreement (Matheson);
- (viii) investment management agreement (AIFM; Matheson);
- (ix) administration agreement (Administrator / Matheson);
- (x) depositary agreement between the fund and the Depositary where the QIAIF is established as an ICAV or investment company (not required if QIAIF is a unit trust) (Depositary; Matheson);
- (xi) prime brokerage agreement and sub-depositary agreement (where relevant) (Prime Broker, Depositary, Matheson);
- (xii) letter of confirmation the fund is not a money market fund; and
- (xiii) confirmation from applicant that the prospectus, the instrument of incorporation / memorandum and articles of association / trust deed and the material contracts are in compliance with the Central Bank's AIF Rulebook (Matheson).

Board Approval

A meeting of the fund's directors in the case of an ICAV or investment company and the directors of the manager in the case of a unit trust will need to be convened to review the draft documentation. The board of directors of the ICAV / investment company or the board of directors of the manager of the trust will formally appoint the various service providers to the fund and will approve the draft documentation. The board will also formally deal with certain Irish company law matters where the QIAIF is established as an investment company (see more on the investment company incorporation below).

Once approved by the board, the various agreements can be executed and final documentation can be filed with the Central Bank for approval using the fast-track authorisation process referred to above.

Registration of an ICAV

The registration of an ICAV with the Central Bank precedes the application for authorisation as a QIAIF and is a relatively straightforward process. The Central Bank will issue a registration order for a new ICAV within two weeks from the date of receipt of the application for registration. Matheson can prepare the necessary forms for this registration.

Incorporation of an Investment Company

Where the QIAIF is established as an investment company, Matheson can arrange for the incorporation of the investment company. Our company secretarial department can deal with the necessary filings with the Companies Registration Office ("CRO") in this regard. This will take place at the outset of the project. As stated above, a board meeting will then be held towards the end of the project to approve the various documents and any changes to the board. A list of directors' directorships and partnerships over the past ten years (whether paid or unpaid) needs to be filed with the CRO.



5 Taxation of Irish Domiciled Funds

5.1 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 in Irish tax legislation to institutional investors and companies only).

5.2 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, where funds are not marketed to Irish investors and certain approved measures are put in place, investor declarations are not required. CCFs are not required to obtain investor declarations (due to their tax transparent nature).

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.

5.3 Treaty Access

The Irish tax authorities consider that Irish domiciled funds (other than 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 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 CCF's investment is located) and the unitholder'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.

5.4 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 custody, 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.



6 ISE Listing

The ISE 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. A stock exchange listing on a recognised exchange in an OECD jurisdiction, such as the ISE, 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 the ISE, 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 listing process can be completed contemporaneously with the Central Bank's authorisation process.

Umbrella funds may be listed, through the approval by the ISE of the umbrella 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 ISE 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.

The prospectus will be used as the listing particulars for the purposes of the ISE and copies of the QIAIF documents discussed at 4.6 above will be filed with the ISE as necessary. In addition, further documents need to be filed with the ISE on the day prior to the listing, which will take place after the authorisation of the fund by the Central Bank.

Matheson offers the full range of ISE listing services, including investment funds and debt securities listing. As a full service law firm, Matheson offers clients the convenience of having their legal and listing requirements dealt with seamlessly within one firm. We act as a listing sponsor and listing agent to facilitate the listing of both Irish and international funds and debt securities on the ISE by providing:

- listing sponsor and agent services for investment funds and debt securities;
- guidance on all stages of the listing process from initial review to final listing; and
- guidance on the on-going obligations of the ISE.

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