A Guide to Re-domiciling Investment Fund Companies to Ireland

Irish Tax Firm of the Year 2013, The International Tax Review
Client Choice 2013, International Law Office
Financial Times
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 international companies and financial institutions doing business in and through Ireland. Our clients include over half of the Fortune 100 companies. We also advise over half of the world’s 50 largest banks and 7 of the top 10 global technology brands. 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 75 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 knowledge allows us to provide best-in-class advice to clients on all facets of the law.

Matheson is consistently recognised for its excellence and in 2013 was awarded, for the seventh time, the International Law Office Client Choice Award for Ireland. We are the only Irish law firm commended by the Financial Times for innovation in corporate law, finance law and corporate strategy.

The Asset Management and Investment Funds Group

Matheson is the number one ranked funds law practice in Ireland, acting for 27% of Irish domiciled investment funds by assets under management as at 30 June 2013. Led by 10 partners, the practice comprises 40 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 IFLR, and the team is specifically recognised for its abilities with respect to complex mandates. Matheson was the first Irish law firm to be named European Law Firm of the Year by The Hedge Fund Journal, and is the only Irish law firm to have received the prestigious European Advisor of the Year award from Funds Europe.

With the strongest Irish law firm presence in the US through our Palo Alto and New York offices, Matheson’s resident Irish counsel team includes an asset management partner based full-time in our New York office. In London, we have the largest operation of any Irish law firm, including dedicated Irish funds counsel based in London.

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.

A Guide to Re-domiciling Investment Fund Companies to Ireland

The purpose of this brochure is to provide an outline of the key practical steps involved in order to effect the re-domiciliation of an investment fund to Ireland. It outlines the reasons for re-domiciling an investment fund to Ireland, and provides a general overview of the fund authorisation process.
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1 Re-Domiciliation of Investment Funds to Ireland – Introduction and Overview
The Companies (Miscellaneous Provisions) Act 2009, which was enacted in December 2009 (the "Act"), introduced a new legal framework for the re-domiciliation of investment fund companies established and operating in certain prescribed jurisdictions (each a “relevant jurisdiction” under the Act) to Ireland. Effective from 7 September 2010, the relevant jurisdictions from which corporate investment funds may re-domicile to Ireland using the re-domiciliation mechanism are:

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

Further jurisdictions may be added to the above list in due course.

The primary intention behind the Act is to enhance further Ireland’s attractiveness as a domicile for funds by ensuring that a fund which is structured as a corporate entity in one of the relevant jurisdictions can re-register in Ireland by way of continuation, such that the company continues to operate as if it had originally been incorporated in Ireland. The legislation was drafted in a manner that seeks to avoid the imposition of unnecessary procedural hurdles for any investment fund company seeking to relocate to Ireland, and the legal framework expressly recognises that, for Irish law purposes, a migrating fund company will not be treated in Ireland as a new legal entity, with the result that its existing corporate identity will be preserved.

Following on from the introduction of the Act, a guidance letter was issued by the Central Bank of Ireland (the “Central Bank”) on 17 December 2010, outlining a policy which applies similar procedures for the re-domiciliation of investment funds structured as unit trusts to Ireland. The guidance letter also provides further detail on how the re-domiciliation procedures for migrating funds functions in practice.

In a climate of increased investor demand for a regulated product, the appetite for a streamlined and efficient mechanism facilitating the relocation of investment funds onshore has never been stronger.

Ireland has always been regarded as the jurisdiction of choice for asset managers and investors alike – with its favourable tax regime for investment fund companies; a highly educated labour force with experienced fund professionals operating within a common law legal system; and a prudent but flexible regulator with extensive knowledge of sophisticated fund structures and strategies. Ireland is the fastest growing fund servicing centre in the world with extensive industry experience and expertise in the areas of fund management, administration, custody, legal services and auditing. At present, there are approximately 12,000 professionals working in the Irish funds industry and all of the major global administration and custody groups are present in the Irish market to service Irish collective investment schemes. The re-domiciliation provisions further enhance the efficiencies of the Irish regulatory framework for investment funds, and give Ireland a competitive advantage over neighbouring jurisdictions unable to offer a streamlined migration mechanism.

Partners in the Asset Management and Investment Funds Group contributed to the instigation of the re-domiciliation legislation and led the industry drafting team.
2 Reasons for Re-Domiciling an Investment Fund to Ireland
2.1 Advantages of the Re-domiciliation Framework

Prior to the introduction of the re-domiciliation procedures, investment companies in other jurisdictions wishing to relocate to Ireland would have used mechanisms that provided for the incorporation of a new fund in Ireland, with the transfer of assets from the existing fund to the new fund. Although this process worked well for many years, it has obvious drawbacks. The transfer of assets between two legal structures may not be efficient from a tax perspective. Management of transfer agency issues may be complicated. In addition, it becomes necessary to build a distribution network for the new company, rather than rely on existing registrations and distribution networks.

The Act established a straightforward and efficient process for investment funds seeking to relocate to Ireland, with the following key advantages:

• For Irish law purposes, a migrating company is not treated as a new legal entity; rather the existing corporate identity is retained.
• The need to create a new fund is eliminated, as are any tax issues that previously may have arisen on moving assets between funds.
• The new re-domiciliation procedure does not affect any of the existing contracts to which the migrating company is a party, ensuring continuity of those contractual arrangements and activities.
• Authorisation of the migrating company by the Central Bank is co-ordinated with the Irish Companies Registration Office (the “CRO”), in order to achieve simultaneous authorisation and registration, ensuring that the re-domiciled company benefits from Ireland’s favourable tax regime for investment funds.
• For the purposes of effecting the re-domiciliation, the procedure does not require a general meeting of shareholders of the migrating company in Ireland.

2.2 Advantages of Ireland as a Fund Domicile

The advantages of Ireland as a fund domicile include the following:

• Ireland is internationally recognised as a leading fund domicile of choice:
  • Ireland services alternative investment assets representing approximately 43% of global and 63% of European hedge fund assets and is the largest hedge fund administration centre in the world;
  • Irish domiciled ETFs represent approximately 32% of the total European ETF market;
  • Irish domiciled money market funds represent approximately 30% of the total European money market fund market;
  • Ireland is the European domicile of choice for cross-border fund distribution, accounting for approximately 30% of European cross-border fund market; and
  • Ireland has the largest number of stock exchange listed investment funds, with over 3,000 funds and sub-funds listed.

![Pie chart showing Irish Administered Alternative Investment Funds and Ireland as a Domicile for European ETFs](chart.png)

Source: HFMWeek 19th Survey & IFIA, October 2012
Source: BlackRock ETF Landscape & IFIA, September 2013
• Ireland is a Member State of the EU 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.

• Ireland is an OECD Member State.

• Ireland offers a range of tax-exempt fund vehicles (including investment companies, unit trusts, investment limited partnerships and common contractual funds) which can be tailored to suit investor requirements.

• With a continuously expanding tax treaty network including over 60 countries, Ireland has one of the most developed and favourable tax treaty networks in the world.

• Irish funds can use structured fund vehicles which can access Ireland’s network of double tax treaties.

• The Irish Stock Exchange 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.

• Ireland has a pragmatic regulatory environment governed by an approachable Central Bank willing to discuss and if possible work through any issues.

• Irish investment funds, fund managers, administrators and depositaries enjoy prudent but practical regulation, with regulatory sensitivity to the needs of international fund managers and service providers.

• 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 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 24 jurisdictions including China, 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 Alternative Investment Fund Managers Directive (“AIFMD”) co-operation agreements with 42 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.

• 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 10% of Ireland’s resident population coming from abroad, the Irish funds industry has access to a workforce which includes many native speakers of European and Asian languages.

• Ireland has direct daily flights from the US and from 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.

• Ireland was ranked Best Country for Business in a Forbes survey conducted in 2013, based on eleven different factors: property rights, innovation, taxes, technology, corruption, freedom (personal, trade and monetary), red tape, investor protection and stock market performance.
3 Re-Domiciling an Investment Fund to Ireland – Practical Steps
3.1 Preliminary

An application for authorisation of a non-Irish investment fund seeking to re-domicile to Ireland will be treated by the Central Bank in the same manner as applications from prospective domestic applicants, and the migrating fund will have to comply with relevant legislation and Central Bank requirements appropriate to the relevant regulatory regime for the fund. Investment funds in Ireland are established as either UCITS (ie, an undertaking for collective investment in transferable securities) under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as amended, (the "UCITS Regulations"), or AIFs (ie, alternative investment funds) which are indirectly regulated pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (the "AIFM Regulations") and by the Central Bank’s AIF Rulebook. The choice of regulatory regime will depend on the nature of the investors to whom the fund is to be sold and the specific investment policies of the fund. The Central Bank operates separate authorisation procedures depending on whether application is sought for a UCITS or an AIF, and this authorisation must be achieved before the re-domiciliation can be declared effective. An overview of the main features of the UCITS and AIF regimes is outlined at Section 4 below. As a condition of authorisation, approval must be obtained for the relevant service providers to the fund. An outline of the steps involved in obtaining this approval and of the other applicable authorisation requirements for both UCITS and AIFs is contained at Section 5.

As mentioned, while the re-domiciliation provisions under the Act apply only to investment funds which are structured as companies, the Central Bank will apply a procedure similar to the corporate regime for unit trusts seeking to re-domicile in Ireland. The extension of the re-domiciliation mechanism to unit trusts enables Ireland to offer a comprehensive solution to fund managers seeking to overhaul existing offshore fund structures.

The following outlines the practical steps involved in order to effect the re-domiciliation of an investment fund company and a unit trust to Ireland.

3.2 Re-Domiciliation of an Investment Fund Company – Overview of Process

• In accordance with the migrating company’s own requirements, a shareholder meeting will, as necessary, be convened in the jurisdiction from which the migrating company is seeking to move, in order to discuss the formal matters concerning the re-domiciliation.

• The migrating company will be required to amend its memorandum and articles of association (or equivalent constitutional document) to ensure that these comply with Irish law and meet the requirements of the Central Bank. The proposed resolution to amend and adopt the revised constitutional document is drafted so as to be conditional upon receipt of authorisation of the migrating company from the Central Bank.

• The migrating company then applies to the CRO to be registered as a company in Ireland by way of continuation. This involves submitting an application using a prescribed form together with a fee and making a single filing of registration documents which includes a certified copy of the migrating company’s corporate and constitutive documents; a list setting out particulars in relation to the migrating company’s directors and secretary; a statutory declaration of a director of the migrating company made not more than 28 days prior to the date on which the application is made to the CRO to the effect that the migrating company is not subject to any petition to be wound-up (or any similar petition) and that it has notified creditors of the proposed migration and obtained any necessary contractual consents or waivers; and a schedule of any security interests created by the migrating company. If there is any material change in any of the information contained in the statutory declaration after the date of the declaration and before the date of the registration, the director must deliver a new statutory declaration to the CRO relating to the change.
- A director of the migrating company must also make a statutory declaration regarding the solvency of the migrating company. This must contain a statement of the migrating company’s assets and liabilities and must be accompanied by a report of an independent auditor confirming that the director’s opinion regarding the company’s solvency and the statement of assets and liabilities are reasonable.

- The migrating company must provide the CRO with details of its proposed registered office in Ireland.

- The registration documentation must be accompanied by a statutory declaration made by a solicitor engaged by the migrating company or a director of the migrating company stating that the migrating company has complied with all of the requirements of the registration procedure.

- The CRO will not register the migrating company in Ireland until it is satisfied that there has been compliance with all the requirements of the Act in respect of the registration, and it has received notification from the Central Bank that it proposes to authorise the migrating company to carry on business as an Irish domiciled fund.

- An applicant seeking to migrate into Ireland must receive authorisation from the Central Bank to operate either as a UCITS or an AIF investment company, depending on the migrating company’s investment policies (see Section 4 and Section 5 below).

- Where appropriate, the Central Bank issues a notification to the CRO and the migrating company that it proposes to authorise the migrating company to carry out business in Ireland. The CRO must receive this notification prior to registration, and once received, the CRO has the power to issue a certificate of registration of the migrating company by way of continuation as a body corporate under Irish law. In this regard, while applications to the CRO and the Central Bank are separate and independent applications, the CRO will liaise directly with the Central Bank to ensure registration and authorisation are completed on the same day.

- Where the Central Bank is satisfied that it has received a complete application it will notify the CRO and the migrating company that it proposes to authorise the migrating company to carry out business in Ireland. Upon receipt of this notice, the CRO has the power to issue a certificate of registration of the migrating company by way of continuation as a body corporate under Irish law and, simultaneously, the Central Bank authorises the migrating company as an investment fund in Ireland.

- As soon as the migrating company is registered by the CRO, it is obliged to apply to be de-registered in its home domicile and it must notify the CRO and the Central Bank within three days of this de-registration.

### 3.3 Re-Domiciliation of a Unit Trust – Overview of Process

The applicable procedures relating to re-domiciliation of unit trusts are set out in the Central Bank’s guidance letter. The procedures are available to unit trusts migrating from any of the relevant jurisdictions, and to the extent possible, mirror the regime for investment companies under the Act. In addition, the constitutive document of the trust (the trust deed) will determine the trust’s internal requirements to consent to the migration. The practical steps which will apply are outlined below.

- Convening a unitholder meeting in the home jurisdiction of the trust to discuss the formal matters concerning the re-domiciliation.

- Retiring the original trustee as trustee of the trust and arranging for the appointment of an Irish domiciled trustee. The migrating trust will be required to amend its trust deed to reflect the new appointment and to ensure compliance with Irish law and the requirements of the Central Bank. The proposed resolution of the unitholders to amend and adopt the revised trust deed is drafted so as to be conditional upon receipt of authorisation of the trust from the Central Bank.

- Applying to the Central Bank for authorisation from the Central Bank to operate either as a UCITS or an AIF unit trust, depending on the investor base and the investment policies of the migrating trust.

- Applying to the Central Bank to formally register the trust as an Irish domiciled unit trust. As unit trusts are not required to register with the CRO, the registration function in relation to unit trusts is assumed by the Central Bank. This means that the Central Bank operates a dual role for migrating unit trusts: first, to authorise the migrating trust as an Irish domiciled fund and second, to arrange the necessary registrations required to effect the re-domiciliation.

- The Central Bank requirements for registration vary depending on whether the migrating trust is registered in its home jurisdiction and whether it is subject to regulatory supervision in that jurisdiction. In the case of Bermuda and the Cayman Islands, the Central Bank has specified in its guidance letter the documentary requirements for registration, whereas migrating funds from other jurisdictions must make advance enquiry of the Central Bank to confirm the specific documents. In general, the requirements include a confirmation of good standing and solvency of the trust in its home jurisdiction, and certified evidence of formal de-registration or de-authorisation. In the case of unregistered trusts, the Central Bank has confirmed that it will accept a legal opinion confirming that the unit trust has severed its connection with its home jurisdiction in lieu of a formal de-registration notice.

- In the case of unregistered trusts, the Central Bank will also require a statutory declaration from both the trustee and manager of the migrating trust or from a director of the promoter to the effect that the migrating trust is not subject to any petition to be wound-up (or any similar petition) and that it has notified creditors of the proposed migration and obtained any necessary contractual consents or waivers. A declaration of solvency is also required to be sworn by the trustee or the promoter, and should be accompanied by a statement of assets and liabilities and a report from the auditor of the trust.
4 Appropriate Regulatory Status – UCITS and AIFs
As mentioned above, the migrating company will be set up as either a UCITS or an AIF depending on the nature of the investors to whom the fund is to be sold and the specific investment policies of the fund. The primary difference in the regulation of a UCITS and an AIF relates to the nature of 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.

4.1 UCITS

The UCITS regulatory regime relates to open ended retail investment vehicles investing in transferable securities and other liquid financial assets. In particular, the UCITS Regulations require that at least 90% of the net assets of the fund must be invested in (i) listed or soon to be listed transferable securities or securities traded on a market which is regulated, operates regularly, is recognised and open to the public; (ii) money market instruments; (iii) units of other funds; (iv) deposits with credit institutions; or (v) financial derivative instruments.

In order to comply with the diversification requirements under the UCITS Regulations, a UCITS can invest up to a maximum of 10% of its net assets in any one issuer (subject to certain exceptions). In addition, the total number of securities held in issuers in which a UCITS invests more than 5% of its net assets may not, in aggregate, exceed 40% of the net asset value of the UCITS.

UCITS can generally be sold under the UCITS “passport”, without any material restriction as to category or number of investors, in any EU Member State, subject to filing appropriate documentation with the relevant regulatory authority in the EU Member State(s) where it is to be sold. The UCITS product offers fund promoters the ability to structure funds with long only equity and bond exposures, long-short and 130/30 strategies, fund of funds, money market funds, index tracker funds and structured derivative funds.

4.2 AIFs

AIFs offer greater flexibility with respect to investment styles and restrictions than the UCITS regime, and may be established as retail investor alternative investment funds ("RIAIFs") (no regulatory minimum subscription) and qualifying investor alternative investment funds ("QIAIFs") (minimum initial subscription of €100,000 and may be marketed to qualifying investors). The Central Bank has introduced general investment diversification and borrowing restrictions for RIAIFs. However, these general restrictions do not apply to QIAIFs.

Prior to the introduction of the AIFMD, AIFs in Ireland were established under domestic rather than EU legislation and as such they did not have the benefit of the UCITS “passport”. With the introduction of the AIFM Regulations, QIAIFs with a fully authorised EU alternative investment fund manager ("AIFM") can now avail of a marketing “passport” similar to the UCITS passport. AIFs with a registered AIFMD (ie, an AIFM managing AIFs with assets under management less than €100 million or under €500 million in the case of unleveraged AIFs with a five-year lock-in period) or QIAIFs with a non-EU AIFM must rely on the individual private placement regimes of EU Member States.

Further information in relation to UCITS funds and AIFs and the Irish regulatory framework for collective investment schemes is set out in our brochure Ireland as an International Fund Domicile available on our website or upon request.
5 Overview of the Authorisation Process for an Irish Investment Fund
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. The essential elements of the authorisation process are outlined below.

5.1 Promoter Approval

In the context of UCITS, the Central Bank must be satisfied with the experience, expertise, reputation and resources of the promoter. The Central Bank regards the promoter as the driving force behind the establishment of the fund. There is no requirement that the promoter be located in Ireland, but the Central Bank must be satisfied that the applicant is regulated by a competent authority in its home state, has sufficient experience, expertise and reputation in managing and advising investment funds and has sufficient financial resources (it is required to maintain a minimum of €635,000 in net shareholder funds).

The promoter is the entity which decides what legal structure a fund will take, the proposed investment policy of the fund, where the fund invests and in what jurisdictions it will be sold. In the context of corporate funds, the fund promoter selects the board of directors and the various service providers (administrator, trustee, investment manager, distributor). For non-corporate funds, the promoter establishes or appoints the management company. The Central Bank will turn to the promoter should significant issues arise in relation to the fund. Where the promoter is also the investment manager, the Central Bank concurrently approves the promoter to also act as the investment manager and there is no need for a second application process.

The timeframe for an entity not previously approved as a promoter of Irish funds and seeking to obtain this approval varies. There is a fast-track process in place for applicants that can demonstrate previous experience in the promotion of collective investment schemes or are authorised either as a firm under the European Union Markets in Financial Instruments Directive ("MiFID") or as a credit institution in a member state of the European Economic Area. If an applicant does not qualify for the fast-track process, it should be possible to obtain the relevant approval by completing the Central Bank’s application form and providing relevant supporting documentation. Promoter approval will generally issue within a three-week timeframe and the practice is generally to prepare other fund documentation during this period so that it may be filed upon receipt of the relevant approval.

5.2 UCITS Management Company Approval

A UCITS investment company may opt to be “self-managed” or alternatively can appoint an external management company. With a unit trust, the appointment of a management company is mandatory.

If it is intended to appoint a management company to a UCITS fund, then the proposed management company must apply to the Central Bank for authorisation as a UCITS management company, and the submission of an application form, business plan and other supporting documentation is required. In addition, there is a requirement to have a minimum level of financial resources for a UCITS management company. There is also a minimum capital requirement for a self-managed investment company.

A UCITS management company authorised in an EU member state can also manage UCITS funds established in the same or another member state following the introduction of a UCITS management company passport under EU Directive 2009/65/EC (colloquially referred to as “UCITS IV” and effective as of July 2011).

A management company will generally delegate its day-to-day functions to third parties (investment manager, administrator, distributor etc) and have no employees, but it must hold periodic board meetings in Ireland and be tax resident in Ireland, and it retains ultimate responsibility for overall management and control of the functions for which it is appointed by the fund(s). The directors of a management company must be of sufficiently good repute and sufficiently experienced, and a minimum of two persons must conduct the management company’s business.

While the authorisation of a management company is relatively straightforward, a promoter may also choose to avail of pre-existing management companies set up by service providers in the Irish market.

5.3 AIFM Approval for AIFs

When an EU AIFM manages AIFs with assets of greater than €100 million (or €500 million in the case of closed-ended, unleveraged AIFs) it must apply to its competent authority (ie, the Central Bank for Irish entities) for authorisation as an AIFM. An authorised AIFM is permitted to manage AIFs domiciled in member states other than Ireland and to market the AIFs they manage throughout the EU on a passporting basis. The AIFM will need to be approved by the Central Bank in advance of the AIF application for authorisation.

A QIAIF may also appoint a non-EU AIFM. Non-EU AIFMs are, at present and until at least 2015, 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 where these are available).

“Self-managed” AIFs

Investment companies may opt to be “self-managed” and dispense with the appointment of an AIFM. A self-managed AIF cannot use the AIFM passport (or indeed manage any AIFs other than the self-managed AIF itself). They can however 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.

5.4 Investment Manager Approval

It will also be necessary to identify the entity or entities which will act as investment manager(s). If an investment manager has been previously approved to act in respect of Irish collective investment schemes, no further authorisations will be required other than the filing of a form with the Central Bank. In the case of an investment manager holding an authorisation under MiFID or which is a credit institution regulated within the European Economic Area, the applicant would avail of a fast-track approval process. There is a slightly longer process for an entity regulated by the SEC or similar entity. Where an 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. The approval of investment managers is similar to the process for promoter approvals. It should not take longer than two to three weeks to complete and may be run in conjunction with the drafting of relevant documentation.

5.5 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, general partners of investment limited partnerships and directors of AIFMs.

All directors 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 individual questionnaire and the submission of supporting documents that they are competent and capable; honest, ethical and able to act with integrity; and financially sound.

5.6 Selection of Custodian / Depositary and Administrator

It will be necessary to appoint a Central Bank-approved custodian / depositary for the safe-keeping of 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 register. In each case the entity must be located in Ireland and the relevant service contracts will form part of the filing with the Central Bank. All major fund service providers have a presence in Ireland.
5.7 Approval of Documentation by the Central Bank

In the case of a UCITS, the prospectus and deed of constitution are filed with the Central Bank for prior approval. Once these documents have been cleared of comment by the Central Bank, they may be dated and submitted in final form. The review process will typically take four to six weeks to complete from first submission. The approval procedures for QIAIFs have been streamlined by the Central Bank and a one day fast-track authorisation is possible, subject to the provision of the relevant confirmations, and pre-approval of the AIFM or promoter (in the case of UCITS only), directors and investment manager. It would only be necessary to seek prior Central Bank approval of documentation in the event that the proposed structure contains any unusual features or might require a derogation from those provisions of the Central Bank’s rules applicable to QIAIFs.

5.8 Irish Stock Exchange Listing

The Irish Stock Exchange (the “ISE”) is an internationally recognised, regulated exchange for the list of Irish and non-Irish domiciled investment funds and 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, including certain pension funds or investors in jurisdictions who are prohibited or restricted from investing in unquoted securities.

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 authorisation process. The listing requirements for Irish domiciled funds authorised by the Central Bank have been substantially streamlined and many of the requirements are disapplied for Central Bank-authorised applicants.

Once the ISE has cleared the relevant listing document of comment, it may be filed with the ISE together with the relevant supporting documents. A fund may commence trading on the day following the filing of documentation.

5.9 Role of Legal Advisers

The role of the legal advisers on behalf of a fund would generally include the following:

• Obtaining Central Bank approval of the proposed promoter, where the fund is to be a UCITS.
• Obtaining Central Bank approval of the proposed AIFM, where the fund is an AIF.
• If required, incorporating, and arranging for Central Bank authorisation of, the UCITS management company or the AIFM.
• Obtaining Central Bank approval of the proposed investment manager(s).
• Drafting and finalising the prospectus, deed of constitution, management and investment management agreement(s) as appropriate.
• Preparing all documentation required in connection with the registration of the migrating fund with the CRO or Central Bank, as appropriate.
• Preparing documentation in relation to listing on the ISE and obtaining ISE approval of the prospectus and other relevant documentation.
• Negotiating the depositary and administration agreements.
• Preparing all ancillary documentation for authorisation of the fund by the Central Bank and its registration as an investment fund in Ireland.
• Co-ordinating the launch board meeting and providing legal advice on any other issues relevant to the establishment of the fund.
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