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Investment Funds

Ireland
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Walkers

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Law and Practice

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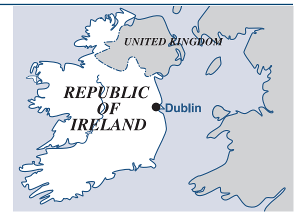

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1. Investment Funds Market Overview

1.1 State of the Investment Funds Market

The latest statistics published by the Central Bank of Ireland (the Central Bank) show that the net asset value of Irish-domiciled funds exceeded EUR3 trillion at the end of the third quarter of 2020. This represents an annual increase of 5% (EUR149 billion) from EUR2.93 trillion at the end of the third quarter of 2019. Since the end of 2019, the net asset value of Irish-domiciled funds grew by almost EUR29 billion.

The number of Irish-domiciled funds (including sub-funds) grew from 7,707 at the end of 2019 to 7,821 at the end of the third quarter of 2020. On an annual basis, the number of Irish-domiciled funds increased by 252, growing from 7,569 at the end of the third quarter of 2019.

In terms of the number of Irish-domiciled funds by category, Irish-domiciled alternative investment funds (AIFs) (including sub-funds) reached 3,061 at the end of the third quarter of 2020, and the total number of Irish-domiciled undertakings for collective investment in transferable securities (UCITS) (including sub-funds) reached 4,760.

The total number of Irish-domiciled qualifying investor alternative investment funds (QIAIFs) reached 2,785 at the end of the third quarter of 2020, and the total assets held by Irish QIAIFs reached EUR716 billion.

The Investment Limited Partnerships (Amendment) Act 2020 was signed into law on 23 December 2020. This Act amends the Investment Limited Partnership Act 1994, the legislation governing Irish investment limited partnerships (ILPs). A summary of the amendments is set out in **4.1 Recent Developments and Proposals for Reform**. It is anticipated that, as a result of these amendments, Ireland's limited partnership regime will become more attractive to managers of private equity funds and other less liquid asset classes.

2. Alternative Investment Funds

2.1 Fund Formation

2.1.1 Fund Structures

AIFs that are domiciled in Ireland are predominantly established as regulated funds and are required to be authorised by the Central Bank. Regulated AIFs in Ireland are sub-divided into two categories:

- retail investor alternative investment funds (RIAIFs); and
- QIAIFs.

The vast majority of AIFs that are domiciled in Ireland are established as QIAIFs. As RIAIFs are generally targeted at retail investors, this type of fund will be discussed in **3. Retail Funds**.

There are five legal structures currently available when establishing an AIF in Ireland:

- the investment company;
- the Irish collective asset-management vehicle (ICAV);
- the unit trust;
- the common contractual fund (CCF); and
- the ILP.

Historically, the investment company was the vehicle of choice for investors looking for an Irish corporate fund vehicle. However, this changed in 2015 with the introduction of the ICAV as a bespoke corporate structure that caters specifically for the needs of the funds industry.

Key advantages of the ICAV versus the investment company include:

- the ability to elect to dispense with the holding of an annual general meeting;
- the ability to file a "check the box" election to be treated as a partnership (or a disregarded entity if a single shareholder) for US federal income tax purposes;
- the ability to amend the ICAV's constitutional document, known as the instrument of incorporation, without shareholder approval for certain types of changes;
- the ability to prepare separate financial statements for separate sub-funds of the ICAV; and
- not being required to make the audited financial statements publicly available.

Investors seeking to use a trust structure for their investment fund can establish an AIF in Ireland structured as a unit trust. Unlike the investment company and the ICAV, which issue shares to their investors, unit trusts issue investors units representing a beneficial interest in the assets of the trust. As it is a trust arrangement, a unit trust is not a separate legal entity, meaning that it does not have power to enter into contracts in its own name. In practice, the board of directors of the fund manager acts on behalf of the unit trust.

While CCFs were initially developed in 2003 to facilitate the pooling of pension fund assets in a tax-efficient manner, this structure may be used by any entity that seeks to avail of a tax-transparent structure; however, individuals cannot invest in CCFs. A CCF is a contractual arrangement constituted by a deed of constitution entered into between a management company and a depositary. Units in a CCF identify the proportion of the underlying investments of the CCF to which an investor is beneficially entitled. Through contractual arrangements entered into with the management company, the investors participate and share in the property of the investment fund as co-owners of the assets of the fund. As a co-owner, each investor in the CCF holds an undivided co-ownership interest as a tenant in common with the other investors. The CCF is a tax-transparent structure, which means that investors in a CCF are treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares, units or interests in an entity that itself owns the underlying investments.

As set out in **1.1 State of the Investment Funds Market**, the legislation governing the ILP structure offered in Ireland has recently been amended, to modernise the structure; details of the amendments are set out in **4.1 Recent Developments and Proposals for Reform**. With the enactment of the amendments to the existing legislation governing ILPs, it will be possible for an ILP to be structured as an umbrella fund. Investors in an ILP hold interests in the limited partnership by entering into a partnership agreement with the general partner as limited partners.

An Irish fund can be established as either a standalone fund or an umbrella fund comprising one or more sub-funds, each with segregated liability. Each sub-fund will generally have a different investment objective and policies, and may comprise different classes of shares/units/interests. Typically, classes of shares/units/interests are issued to allow for different fee arrangements, different minimum subscription amounts, different currencies and/or different distribution arrangements within the same sub-fund. The legislative regime enables the assets and liabilities of each sub-fund of an umbrella investment fund established as an investment company, ICAV, unit trust or CCF to be segregated from the assets and liabilities of the other sub-funds of that umbrella, meaning that the liabilities of a sub-fund are discharged solely from the assets of that sub-fund. A sub-fund of an umbrella fund is not a separate legal entity, but an umbrella fund may sue and be sued in respect of a particular sub-fund.

There are no restrictions on Irish alternative funds being structured as either open-ended or closed-ended; however, funds that have the ability to implement a redemption settlement period of greater than 90 days are categorised as open-ended with limited liquidity.

Master-feeder structures can be established for a variety of reasons, such as to cater for the different tax reporting requirements of certain categories of investors, including US taxable persons, non-US investors and US tax-exempt investors. Funds are increasingly being established in Ireland to act as the master fund in master-feeder structures, which include an Irish feeder fund for European investors alongside feeder funds that are domiciled in other jurisdictions, generally Delaware or the Cayman Islands. The use of an Irish master fund in the structure enables the passporting of the Irish master and/or Irish feeder fund throughout Europe using the AIFMD marketing passport.

The majority of investment managers and investment advisers appointed to act for Irish funds are domiciled in other jurisdictions, given that the portfolio management activities are often performed outside of Ireland. However, the number of Irish-domiciled investment managers and investment advisers is on the rise, and such entities are generally structured as private companies limited by shares. It is also possible for the alternative investment fund manager (AIFM) to retain portfolio management responsibilities and this is a relatively common model, particularly for less active and/or less liquid portfolios. In such cases, the AIFM may establish an investment committee with input from an investment adviser.

2.1.2 Common Process for Setting up Investment Funds

If an AIF is structured as either an investment company or an ICAV, it will need to be incorporated or registered with the Irish Companies Registration Office or the Central Bank, respectively, prior to an application being submitted to the Central Bank for authorisation of the fund as a QIAIF.

With the exception of limited asset classes in respect of which a pre-submission is required, there is a fast-track authorisation process for QIAIFs, which allows a QIAIF to be authorised by the Central Bank within 24 hours (by close of business on the day after submission of the application for authorisation) of filing the requisite documentation with the Central Bank. The prospectus, constitutional document and all material contracts being entered into in respect of the QIAIF must be submitted to the Central Bank as part of the application for authorisation of the fund. The Central Bank relies on confirmations from the fund's directors or manager (as relevant) and its Irish legal counsel that the fund complies with the requirements of the Central Bank.

Prior to the submission of the application for authorisation of a QIAIF, it is necessary to ensure that all service providers that are required to be pre-approved by the Central Bank to act for Irish-domiciled funds have indeed been approved to do so. This is most relevant for discretionary investment managers that have not previously provided such services to Irish-domiciled funds. Further details of the clearance process for discretionary investment managers are set out in **2.3.3 Local Regulatory Requirements for Non-local Managers**.

The timeframe for the establishment and authorisation of a QIAIF generally ranges between six and 12 weeks, taking into account the various operational steps that need to be completed, such as the onboarding of service providers and the opening of various custody accounts, where required.

2.1.3 Limited Liability of Investors
Investors are generally only liable for any amounts outstanding on partly paid shares or in a capital call structure for any amounts committed but not yet called. The losses that an investor will suffer will be limited to the subscription or commitment amount.

In addition, umbrella funds have segregated liability between sub-funds, which means that the assets and liabilities of a sub-fund are ring-fenced and such assets cannot be used to satisfy the liabilities of another sub-fund.

2.1.4 Disclosure Requirements
Irish investment funds are required to provide investors with a prospectus that discloses key information about the investment strategy, the parties involved and the potential risks relevant to investing in the fund. Certain QIAIFs are also required to provide a key information document (KID) to investors prior to accepting their investment in the fund, in accordance with the requirements of the Packaged Retail and Insurance-based Products Regulation where those investors are not classified as professional investors under MiFID.

Irish investment funds are also required to publish financial statements and an annual report to investors on the financial state of the entity. In contrast to the position applicable to an investment company, umbrella ICAVs may publish separate financial statements for each sub-fund.

The disclosure and reporting requirements set out in the Alternative Investment Funds Managers Directive (AIFMD) are applicable to Irish AIFs, including the disclosure requirements set out in Article 23 and the reporting requirements set out in Articles 3 and 24 (also known as Annex IV reporting).

In addition, the Central Bank requires monthly and quarterly returns to be submitted, which include details relating to the gross and net asset value, investor dealing activity, and fees and expenses accrued during the period. Ad hoc regulatory reporting is also required in certain circumstances, such as the suspension of an investment fund, material breaches of the investment policy, or material errors in the calculation of the investment fund's net asset value.

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds
Investment in Irish QIAIFs is on the rise, with total assets increasing by EUR27 billion in the period from the third quarter of 2019 to the third quarter of 2020, although there were some COVID-19 related dips in the early months of 2020. Investors in QIAIFs are not confined to any particular geographic region and, in addition to Europe, QIAIFs have also proved popular to investors outside of Europe, including in the Americas and Asia. QIAIFs can be used to invest in a wide range of asset classes and have proved particularly popular for a variety of hedge fund strategies, amongst others.

As investment in QIAIFs is limited to qualifying investors, the types of investors that invest in such funds include a wide variety of institutional investors, such as pension schemes and insurance companies, together with private wealth investment comprising family offices and high net worth individuals.

2.2.2 Legal Structures Used by Fund Managers
Entities seeking authorisation as Irish AIFMs in accordance with the AIFMD are typically established as private companies limited by shares.

2.2.3 Restrictions on Investors
Investments in QIAIFs can only be made by qualifying investors, which are typically institutional investors or sophisticated high net worth individuals. There is a minimum subscription amount for a QIAIF of EUR100,000, although exemptions from this amount can be granted to the fund's manager or general partner, any entity providing investment management or advisory services to the fund, and a director or employee of any of the above, in certain circumstances.

2.3 Regulatory Environment

2.3.1 Regulatory Regime for Alternative Funds
The AIFMD, transposed in Ireland by the European Union (Alternative Investment Fund Managers) Regulations 2013, as amended (the AIFM Regulations), is the key piece of legislation governing the regulation of AIFs in Ireland. The AIFMD primarily regulates the AIFM as opposed to the AIF directly, and is supplemented in Ireland by the Central Bank's AIF Rulebook. The Central Bank is the regulatory body responsible for the initial authorisation and ongoing supervision of all Irish investment funds, whether alternative or retail investment funds.

QIAIFs are not subject to any investment, borrowing or leverage limits set by the Central Bank, except for loan origination QIAIFs. If an investment fund is established to originate loans, then the types of activities that such fund can be involved in are limited, as further detailed in **2.4 Operational Requirements for Alternative Investment Funds**.

In addition to the general rules applicable to QIAIFs contained in Part 1 of Chapter 2 of the AIF Rulebook, there are specific fund type requirements for money market QIAIFs, QIAIFs that invest more than 50% of their assets in another investment fund, closed-ended QIAIFs and loan origination QIAIFs.

2.3.2 Requirements for Non-local Service Providers

Whether alternative funds or retail funds, Irish investment funds must have an Irish-domiciled depositary and administrator. Such entities are regulated and supervised by the Central Bank.

While Irish investment funds structured as investment companies and ICAVs may be self-managed, in practice there has been a move away from self-managed investment funds to funds that are externally managed by an AIFM, in the case of an AIF. A non-Irish AIFM based in the EU can manage Irish investment funds if it has made the requisite application to its home regulator. Non-EU AIFMs can also manage Irish funds, subject to compliance with certain requirements. However, the AIFMD marketing passport is not available to non-EU AIFMs, and Irish AIFs with non-EU AIFMs may only be offered in Europe under the available national private placement regimes.

A person must be approved by the Central Bank to act as a director of an Irish regulated entity. The process involves submitting an individual questionnaire to the Central Bank for consideration. Directors as well as other individuals performing controlled functions, such as persons selected to act as designated persons for an AIFM, are required to comply with the requirements of the Central Bank's fitness and probity regime. If an investment fund is self-managed, the Central Bank's fund management companies guidance will be applicable to it, which includes a broad range of governance requirements. Where the investment fund has appointed an AIFM, the requirements of the Central Bank's fund management companies guidance will apply to the AIFM, other than the section relating to externally managed funds.

Prime brokers may be appointed to provide services directly to an AIF and – provided that the services they are providing do not constitute discretionary portfolio management, which typically they would not – are not required to obtain any separate funds-related regulatory approval to provide these services to an Irish AIF. Irish investment funds are required to file any material contracts entered into by the fund with the Central Bank.

2.3.3 Local Regulatory Requirements for Non-local Managers

The approval process for a discretionary investment manager is dependent on the country of establishment of the entity. An Irish investment fund may typically only delegate investment management services to an entity that is authorised or registered for the purpose of asset management and subject to prudential supervision in its home jurisdiction. In addition, there must be supervisory co-operation between the Central Bank and the supervisory authority in the entity's home jurisdiction, which generally takes the form of a memorandum of understanding or a co-operation agreement between the jurisdictions. The Central Bank has accepted the following jurisdictions as having a comparable regulatory regime to Ireland: Abu Dhabi, Australia, the Bahamas, Bermuda, Brazil, Canada, Dubai, Guernsey, Hong Kong, India, Japan, Jersey, Malaysia, Qatar, Singapore, South Africa, South Korea, Switzerland and the United States. In light of Brexit, the Central Bank has confirmed that UK-based entities can no longer avail of the fast-track application process. UK-based entities already approved to act as discretionary investment managers for Irish investment funds may continue to act as such, but a notification of change in regulatory status needs to be submitted to the Central Bank in such circumstances.

A fast-track application is available to entities that are based in the EU and authorised as an investment firm under MiFID to provide portfolio management, and to an externally appointed AIFM, a UCITS management company or a credit institution under the Capital Requirements Directive that has approval to provide portfolio management under MiFID.

Non-EU-based entities must submit an application to the Central Bank prior to being appointed to act as a discretionary investment manager for Irish investment funds.

An entity cleared to act as an investment manager to Irish investment funds is required to notify the Central Bank in advance of a change of name, registered address or regulatory status.

2.3.4 Regulatory Approval Process

With the exception of limited asset classes in respect of which a pre-submission is required, a fast-track authorisation process applies to QIAIFs, whereby new investment funds can be authorised by the Central Bank within 24 hours of submission of the application for authorisation of the fund. This process also applies to the approval of new sub-funds of existing umbrella funds and to amendments to the investment fund's documentation post-authorisation. From an operational perspective, the timeframe for the establishment and authorisation of a new QIAIF umbrella generally ranges between six and 12 weeks. Sub-funds of an existing umbrella structure can be established more quickly, depending on the circumstances.

2.3.5 Rules Concerning Marketing of Alternative Funds

The marketing rules contained in the AIFMD apply to entities seeking to market AIFs in Ireland. The AIF Rulebook and other Central Bank guidance provide additional information on the marketing of AIFs to investors in Ireland. The relevant firm carrying out the marketing activity will also need to consider whether it is performing any other regulatory activities that may need to be licensed under MiFID – eg, the provision of investment advice.

2.3.6 Marketing of Alternative Funds
In accordance with the AIFMD, authorised EU AIFMs are permitted to market Irish AIFs to professional investors in EU Member States using the AIFMD marketing passport, but there are currently no passporting rights available to non-EU AIFMs. However, marketing by non-EU AIFMs and registered EU AIFMs of Irish AIFs may be carried out under the national private placement regimes in EU Member States, where those are available.

Applications from AIFMs to market QIAIFs in Ireland are submitted to the Central Bank. The type of application to be submitted depends on the category of AIFM and the category of the AIF in question. An Irish AIFM seeking to market an AIF authorised in the EU should submit an application in accordance with Regulation 32 of the AIFM Regulations. An Irish AIFM or an AIFM authorised in another EU Member State seeking to market a non-EU AIF should submit an application in accordance with Regulation 37 of the AIFM Regulations. A non-EU AIFM seeking to market AIFs should submit an application in accordance with Regulation 43 of the AIFM Regulations.

Marketing retail AIFs to retail investors in Ireland is permitted in limited circumstances, and requires an application to be submitted to the Central Bank prior to any marketing taking place.

2.3.7 Investor Protection Rules
As set out in more detail in **2.2.3 Restrictions on Investors**, only qualifying investors can subscribe for shares, units or interests in a QIAIF.

Any further restrictions on the types of investors that a QIAIF may be marketed to will be set out in the fund's prospectus.

Please see **2.1.4 Disclosure Requirements** for a summary of the regulatory reporting requirements applicable to QIAIFs.

2.3.8 Approach of the Regulator
The fast-track process for applications for the authorisation of QIAIFs, approvals of new sub-funds for existing umbrella QIAIFs and post-authorisation amendments for QIAIFs means that such applications are processed within 24 hours of receipt, with the exception of submissions relating to limited asset classes, in respect of which a pre-submission is required.

The Central Bank is generally available to answer specific queries relating to the authorisation and ongoing supervision of AIFs. Such queries generally need to be submitted in writing to the Central Bank for consideration, and the timeframe within which the Central Bank will respond depends on the nature of the query received. The Central Bank will typically not address technical or complex queries on a "no names" basis.

Face-to-face meetings are not typically required for the authorisation of AIFs, but are generally set up to discuss the proposed establishment and authorisation of an AIFM.

2.4 Operational Requirements for Alternative Investment Funds

AIFs being established as money market funds are subject to the requirements of the European Money Market Funds Regulation (Regulation (EU) 2017/1131), which limits the types of assets in which such funds may invest.

The AIF Rulebook limits the activities of a loan originating QIAIF to issuing loans, participating in loans, investment in debt and credit instruments, participations in lending and to operations relating thereto including investing in equity securities of entities or groups to which the loan originating QIAIF lends or instruments that are held for treasury, cash management or hedging purposes.

Irish investment funds established as a QIAIF or a RIAIF are required to appoint an Irish-based depositary that is responsible for the safekeeping of the fund's assets, and are subject to the full AIFMD depositary regime. Any entity acting as a depositary to Irish investment funds is required to be authorised by the Central Bank to provide such services. In addition, there are rules relating to the holding of investors' money in collection accounts and umbrella cash accounts.

Details of how an investment fund's assets are valued need to be set out in the investment fund's constitutional document, and should comply with the valuation rules set out in the AIF Rulebook. Unless an external valuer is appointed, the AIFM will retain responsibility for valuing the fund's assets. The administrator will assist in calculating the net asset value of the fund but will not have any discretion in relation to how assets are valued, and will adhere to the valuation policy adopted by the AIFM in respect of the fund.

Details of the potential risks relevant to the investment fund are required to be disclosed in the fund's prospectus.

Rules relating to insider trading, market abuse and transparency are generally only applicable to Irish listed investment funds.

As Irish regulated entities, Irish investment funds (whether AIFs or UCITS) are subject to anti-money laundering and counter terrorism financing (AML/CFT) legislation. As Irish investment funds generally delegate transfer agency activities including investor services to an administrator, such funds need to be aware of the administrator's policy in relation to AML/CFT, in addition to having their own policy in place.

2.5 Alternative Investment Funds: Fund Finance Market

There are generally no restrictions on AIFs entering into financing arrangements to fund the purchase of investments or for liquidity management purposes. In accordance with the AIFMD, QIAIFs are required to disclose their maximum level of leverage using both the gross method and the commitment approach.

Loan origination QIAIFs are restricted in terms of the amount that can be borrowed, as such funds must not have gross assets of more than 200% of their net asset value.

Lenders will typically take security as part of financing arrangements with QIAIFs. The types of security taken depend on the purpose of the financing and the fund structure. For example, if financing is being obtained to fund investment, it is common for security to be granted over the assets of the investment fund, including any cash accounts held by the depositary on behalf of the fund. If the fund has a capital call structure, it is common for security to be granted over the capital commitment account(s) into which commitments are drawn, as well as over any uncalled commitments. Lenders would typically also have the right to call uncalled capital commitments.

QIAIFs are not permitted to act as a guarantor for third parties; this includes a sub-fund acting as guarantor for another sub-fund in the same umbrella. This restriction can create challenges in relation to the use of financing structures that require cross-collateralisation between borrowing entities falling within the same borrowing group. Depending on the structure, a cascading pledge mechanism can be used to overcome challenges associated with this regulatory restriction. The prohibition on acting as a guarantor for third parties does not apply to wholly owned subsidiaries of the QIAIF.

It is necessary to register a security interest with the relevant authority; depending on the structure of the investment fund, this will be either the Irish Companies Registration Office or the Central Bank.

2.6 Alternative Funds Tax Regime

Irish investment funds structured as authorised investment companies, ICAVs and authorised unit trusts (both AIFs and retail funds) are subject to the Investment Undertaking Tax (IUT) regime and are exempt from Irish tax on their income and gains (assuming that they do not invest in Irish real estate; see below with respect to the Irish real estate fund (IREF) regime). In addition, there is no stamp duty payable on transfers of shares or units of an Irish investment fund, and no subscription tax payable in respect of the issue of shares or units of an Irish investment fund.

Provided that non-Irish resident investors provide a declaration of non-Irish residence to the fund, Irish tax is not payable on distributions or redemption payments to such investors in Irish funds. Distributions or redemption payments to certain classes of exempt Irish resident investors (eg, pension funds, charities and other Irish regulated funds) may also be paid by the fund free from Irish tax, provided a relevant declaration is in place.

Under the IUT regime, where an investor is resident (or ordinarily resident) in Ireland for Irish tax purposes and is not an "exempt Irish investor", an Irish investment fund must deduct Irish tax on certain "chargeable events" (the definition of which includes distributions, redemptions and transfers) and, additionally, on a "deemed disposal". A deemed disposal takes place eight years from the date of each acquisition of shares or units in an Irish fund, and each subsequent period of eight years thereafter. Simplification measures to dispense with the IUT withholding obligation for the fund on a deemed disposal are available where the value of shares or units held by non-exempt Irish investors is less than 10% of the value of the total shares or units in the fund. Such investors must instead pay tax on the deemed disposal on a self-assessment basis. Irish tax at the rate of 41% must be deducted from all distributions and redemptions, and in respect of any gains arising by virtue of a transfer of shares or units in the fund held by Irish resident individuals who are not otherwise exempt. If the distribution, redemption or proceeds of transfer are paid to a company, the rate of withholding tax is 25%.

Irish investment funds structured as CCFs or ILPs are transparent for Irish tax purposes, and profits are treated as arising directly to investors. Investors in investment funds structured as CCFs may be able to claim double tax treaty relief at investor level in respect of the underlying investments of a CCF. Ireland has an extensive and growing network of double taxation treaties (with comprehensive double taxation treaties currently signed with 74 countries) that provide, inter alia, access to favourable tax reclaim rates.

A further specific tax regime applies to Irish AIFs structured as ICAVs, investment companies or unit trusts that invest in Irish real estate (IREFs). Introduced in the Finance Act 2016, the IREF regime applies where 25% or more of the value of the assets of the investment fund (or of a sub-fund in the case of an umbrella fund) is made up of Irish real estate assets, or where it would be reasonable to consider that the main purpose or one of the main purposes of the fund is to acquire IREF assets or carry on an IREF business (ie, activities involving IREF assets, including dealing in or developing land or a property rental business).

Where the IREF rules apply, withholding tax (termed "IREF withholding tax") at the rate of 20% of the "IREF taxable amount" must be deducted from payments made to unit holders on an "IREF taxable event", such as a distribution or redemption, and on a sale of shares or units in the IREF. As the regime operates in parallel with the IUT regime, broadly, IREF withholding tax applies in relation to those investors that are exempt from IUT, such as non-Irish resident investors and certain classes of exempt Irish investor. However, certain of those investors are also exempt under the IREF regime. The categories of exempt persons are restricted broadly to widely held EEA/EU regulated pension funds, life assurance companies, other authorised funds and their EU/EEA equivalents, exempt charities, credit unions and companies benefitting from the Irish securitisation tax regime in Section 110 of the Taxes Consolidation Act 1997, as amended.

An investor in an EU Member State (other than Ireland) or a country with which Ireland has a double tax treaty may reclaim IREF withholding tax under the dividends article of the relevant double tax treaty, and the charge to Irish tax will be reduced to the treaty rate. However, beneficial owners of 10% or more of the shares or units in an IREF (directly or indirectly) are technically precluded from claiming treaty relief as the Irish rules treat the payment from the IREF to such persons as income from immoveable property to which the source country (Ireland) would typically be given taxing rights under a double tax treaty.

The Finance Act 2019 introduced further changes to the IREF regime, including anti-avoidance provisions that apply a 20% income tax charge at fund/sub-fund level to combat excessive debt and financing cost deductions, and non-IREF business-related expenses that can reduce the profits that would otherwise be subject to IREF withholding tax on distributions/redemption payments. The debt/financing cost restrictions comprise both a debt-to-cost threshold and a profit financing cost ratio, with financing costs in excess of the applicable ratios being treated as deemed income subject to income tax at 20%. Financing costs on genuine third-party debt are excluded from the provisions.

3. Retail Funds

3.1 Retail Fund Formation

3.1.1 Retail Fund Structures

There are two types of Irish investment funds available to retail investors: RIAIFs and UCITS.

RIAIFs are mentioned briefly in **2.1.1 Fund Structures** as they are AIFs, but as they are targeted at retail investors further details relating to this investment fund type are included where relevant throughout **3. Retail Funds**. A RIAIF can be structured as any of the fund structures detailed in **2. Alternative Investment Funds** – ie, an investment company, ICAV, unit trust, CCF or ILP.

Only the investment company, the ICAV, the unit trust and the CCF are available to UCITS in Ireland; UCITS cannot be structured as ILPs.

The descriptions of each fund structure detailed in **2.1.1 Fund Structures** are also applicable to RIAIFs and UCITS. On a legislative basis, all UCITS are required to operate on the principle of risk spreading, regardless of what legal structure is used, as opposed to QIAIFs and RIAIFs, where only investment companies are required to spread investment risk. However, in the case of RIAIFs, compliance with this principle is implied through requiring the RIAIF to comply with a series of investment and concentration limits in the AIF Rulebook, which are similar to those contained in UCITS legislation, albeit slightly less restrictive. The AIF Rulebook provides that a RIAIF may derogate from complying with certain investment restrictions for a period of six months following the date of its launch, provided that it complies with the principle of risk spreading.

While RIAIFs can be structured as either open-ended, open-ended with limited liquidity or closed-ended, UCITS are open-ended structures where dealing must – at a minimum – be offered twice a month at regular intervals. In practice, the majority of UCITS are structured as daily dealing funds.

As mentioned in **2.1.1 Fund Structures**, the majority of investment managers and investment advisers appointed to act for Irish investment funds are domiciled in other jurisdictions, but any such Irish incorporated entities are generally structured as private companies limited by shares.

3.1.2 Common Process for Setting up Investment Funds

If a RIAIF or UCITS is structured as either an investment company or an ICAV, it will need to be incorporated or registered with the Irish Companies Registration Office or the Central Bank, respectively, prior to an application being submitted to the Central Bank.

Unlike an application for authorisation of a QIAIF, which can generally avail of the Central Bank's fast-track authorisation process where the Central Bank relies on confirmations provided by the investment fund's directors or manager (as relevant) and its Irish legal counsel that the investment fund complies with the requirements of the Central Bank, an application for authorisation of a UCITS or a RIAIF is subject to a detailed review of the investment fund's key documentation by the Central Bank. After its initial review of the draft documentation, the Central Bank will issue comments, which need to be dealt with before the investment fund can be authorised. All other material contracts entered into by the UCITS or RIAIF will need to be submitted to the Central Bank on authorisation day, with corresponding certifications being made as to their compliance with the requirements of the Central Bank.

Prior to the application for authorisation of a UCITS or a RIAIF being approved by the Central Bank, it is necessary to ensure that all service providers that are required to be pre-approved by the Central Bank to act for Irish-domiciled investment funds have indeed been approved to do so. This is most relevant for discretionary investment managers that have not previously provided such services to Irish domiciled investment funds. Please see **2.3.3 Local Regulatory Requirements for Non-local Managers** for further details of the clearance process for discretionary investment managers.

For applications for new UCITS or RIAIFs that are not clones of previously authorised funds, the Central Bank aims to respond to initial comments within 20 business days of receiving a complete application, and to respond to all subsequent comments within ten business days of receiving the responses. The timeframe for the establishment and authorisation of a UCITS or a RIAIF generally ranges between 12 and 24 weeks.

The process for establishing and seeking authorisation from the Central Bank for a UCITS or a RIAIF can be more expensive than the process for a QIAIF due to the iterative regulatory review process to which an application for a UCITS or a RIAIF is subject.

3.1.3 Limited Liability of Retail Fund Investors

As with QIAIFs, investors in RIAIFs are generally only liable for any amounts outstanding on partly paid shares or in a capital call structure for any amounts committed but not yet called. The losses that an investor will suffer will be limited to the subscription or commitment amount.

Investors in UCITS are generally only liable for any amounts subscribed for, so that any losses suffered by an investor will be limited to the subscription amount.

In addition, umbrella funds have segregated liability between sub-funds, which means that the assets and liabilities of a sub-fund are ring-fenced and such assets cannot be used to satisfy the liabilities of another sub-fund.

3.1.4 Disclosure Requirements

As set out in **2.1.4 Disclosure Requirements**, Irish investment funds are required to provide investors with a prospectus that discloses key information about the investment strategy, the parties involved and the potential risks relevant to investing in the investment fund. RIAIFs may be required to provide a KID to investors prior to accepting their investment in the investment fund, in accordance with the requirements of the Packaged Retail and Insurance-based Products Regulation. All UCITS are required to provide investors with a key investor information document (KIID) prior to accepting their investment in the fund. A KIID is a short form offering document summarising the key features of the UCITS, which must be provided to investors prior to their investment in the UCITS. Although similar to the KID, there are certain differences between the KID and KIID and, under revised legislative measures, UCITS will be required to make a KID available to investors after the expiry of a transitional period ending on 31 December 2021.

Irish investment funds are also required to publish financial statements and an annual report to investors on the financial state of the entity. Umbrella ICAVs may publish separate financial statements for each sub-fund.

The disclosure and reporting requirements set out in the AIFMD are applicable to RIAIFs, including the disclosure requirements set out in Article 23 and the reporting requirements set out in Articles 3 and 24 (also known as Annex IV reporting).

UCITS are required to make an annual submission of KIIDs to the Central Bank, and to submit an annual report detailing the types of financial derivative instruments invested in by the fund during the period.

In addition, the Central Bank requires ad hoc regulatory reporting in certain circumstances, such as the suspension of a fund, material breaches of the investment policy, and if there are material errors in the calculation of the fund's net asset value.

3.2 Fund Investment

3.2.1 Types of Investors in Retail Funds

Investment in Irish UCITS is not limited to retail investors: all types of institutional investors and high net worth individuals invest in UCITS, which are the most popular fund type in Ireland. At the end of the third quarter of 2020, according to figures published by the Central Bank, the total assets held by Irish UCITS reached EUR2.31 trillion, an increase of EUR127 billion from the end of the third quarter of 2019. Similarly to QIAIFs, Irish UCITS also experienced COVID-19 related dips in the early months of 2020.

RIAIFs have not been as popular a product to date in Ireland, with either the UCITS or QIAIF being the product of choice for investors, depending on the investment strategy and target investors. The types of investors that can invest in RIAIFs are not limited, and such funds can target retail, institutional and high net worth investors.

3.2.2 Legal Structures Used by Fund Managers

UCITS management companies are typically established as private companies limited by shares, as are AIFMs that manage RIAIFs.

3.2.3 Restrictions on Investors

Provided investors comply with on-boarding and anti-money laundering due diligence requirements, there are no regulatory restrictions on the types of investors that can invest in Irish retail investment funds.

3.3 Retail Funds Regulatory Environment

3.3.1 Retail Funds Regulatory Regime

UCITS established in Ireland are authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the UCITS Regulations), which transpose the UCITS Directive (Directive 2009/65/EC). In addition, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (the Central Bank UCITS Regulations) together with the Central Bank's Q&As on UCITS and other guidance available from the Central Bank provide information on the specific requirements relating to UCITS.

UCITS may invest in transferable securities and other liquid financial assets, but there are restrictions in terms of permitted investments. Investment restrictions include:

- limits on the types of investments that UCITS can invest in;
- diversification limits;
- limits on the use of financial derivative instruments; and
- limited use of leverage.

For example, a UCITS may invest no more than 10% of its net assets in securities that are not listed, traded or dealt in on a regulated market, and is precluded from investing more than 10% of its assets in any one issuer other than in the case of certain exempted categories of issuers in respect of which higher limits are applied. Where a UCITS invests more than 5% of its assets in any issuer, the maximum amount of any such holdings in excess of 5% is limited to 40% of the net asset value of the investment fund (known as the 5/10/40 rule), other than in the case of certain exempted categories of issuers in respect of which higher limits are applied.

As a type of AIF, RIAIFs are subject to the requirements of the AIFM Regulations and the AIF Rulebook. While RIAIFs are subject to a more restrictive regulatory regime than QIAIFs, this regime is not as restrictive as the UCITS regime. For example, a RIAIF may invest no more than 20% of its assets in securities that are not traded in or dealt on a regulated market (as noted above, the UCITS limit is 10%) and is precluded from investing more than 20% of its assets in any one issuer (as noted above, the UCITS limit is 10%). RIAIFs are generally obliged to ensure that they are sufficiently diversified.

3.3.2 Requirements for Non-local Service Providers

As set out in **2.3.2 Requirements for Non-local Service Providers**, all Irish investment funds (whether AIFs or UCITS) must have an Irish-domiciled depositary and administrator. Such entities are regulated and supervised by the Central Bank.

While Irish investment funds structured as investment companies and ICAVs may be self-managed, in practice there has been a move away from self-managed investment funds to funds that are managed, in the case of a UCITS by a UCITS management company. A non-Irish UCITS management company based in the EU can manage Irish investment funds if it has made the requisite application to its home regulator. In recent years, there has been a rise in so-called "Super ManCos", which are entities seeking authorisation from the Central Bank as both an AIFM and a UCITS management company in order to act for QIAIFs, RIAIFs and UCITS.

A person must be approved by the Central Bank to act as a director of an Irish regulated entity, the process for which involves submitting an individual questionnaire to the Central Bank for consideration. Directors as well as other individuals performing controlled functions, such as persons selected to act as designated persons for a UCITS management company, are required to comply with the requirements of the Central Bank's fitness and probity regime. If an investment fund is self-managed, the Central Bank's fund management companies guidance will be applicable, and the restrictions on the numbers of non-Irish directors and designated persons that can be appointed will apply to the investment fund. Where the investment fund has appointed a UCITS management company, such restrictions will apply to the board of directors of the UCITS management company rather than to the investment fund itself.

Irish investment funds are required to file any material contracts entered into by the fund with the Central Bank.

3.3.3 Local Regulatory Requirements for Non-local Managers

The approval process for a discretionary investment manager of a UCITS or a RIAIF is the same as the process for a QIAIF, as set out in **2.3.3 Local Regulatory Requirements for Non-local Managers**.

3.3.4 Regulatory Approval Process
As the Central Bank reviews key fund documentation as part of the application for authorisation of a UCITS and a RIAIF, the timeframe for obtaining authorisation depends on the level of comment received from the Central Bank on the documentation submitted.

For applications for new UCITS or RIAIFs that are not clones of previously authorised funds, the Central Bank aims to respond to initial comments within 20 business days of receiving a complete application, and to responses to all subsequent comments within ten business days of receiving the responses. This timeframe also applies to applications for the approval of new sub-funds that are considered to be complex. Where it is intended to invest in contracts for difference (CFDs), collateralised loan obligations (CLOs), contingent convertible securities (CoCos) or binary options, the application will be subject to enhanced scrutiny by the Central Bank and additional information may be sought, including portfolio information. For new sub-funds that are clones of previously approved sub-funds or are considered to be non-complex, the Central Bank aims to respond to initial comments within ten business days of receiving a complete application, and to respond to all subsequent comments within five business days of receiving the responses.

The timeframe for the establishment and authorisation of a UCITS or a RIAIF generally ranges between 12 and 24 weeks.

3.3.5 Rules Concerning Marketing of Retail Funds
The marketing rules contained in the UCITS Directive apply to entities seeking to market UCITS in Ireland. The Central Bank UCITS Regulations and other Central Bank guidance provide additional information on the marketing of UCITS to investors in Ireland. In addition, the relevant firm carrying out the marketing activity will need to consider whether it is performing any other regulatory activities that may need to be licensed under MiFID – eg, the provision of investment advice.

3.3.6 Marketing of Retail Funds
A UCITS can generally be sold without any material restriction to any category or number of investors in any EU Member State, subject to the filing of appropriate documentation with the relevant competent authority in the EU Member State(s) where it is intended to market the investment fund. In order to market a UCITS in Ireland, a marketing application must be submitted to the competent authority in its home Member State for onward submission to the Central Bank prior to the commencement of marketing in Ireland.

Although RIAIFs may be marketed to retail investors in Ireland, they may only be marketed to professional investors in other EU Member States using the AIFMD marketing passport. Certain EU Member States may permit the marketing of AIFs to retail investors where additional steps are complied with, but this differs by jurisdiction on a case-by-case basis. RIAIFs must appoint a fully authorised AIFM, and non-EU managers or registered AIFMs are prevented from managing RIAIFs.

The marketing of retail AIFs not domiciled in Ireland is permitted in limited circumstances and requires an application to be submitted to the Central Bank prior to any marketing taking place.

3.3.7 Investor Protection Rules
There are no Irish regulatory restrictions on the categories of investors that can invest in UCITS or RIAIFs.

Any restrictions on the categories of investors that a UCITS or RIAIF may be marketed to will be set out in the fund's prospectus.

Please see **3.1.4 Disclosure Requirements** for a summary of the regulatory reporting requirements applicable to UCITS and RIAIFs.

3.3.8 Approach of the Regulator
The Central Bank is generally available to answer specific queries relating to the authorisation and ongoing supervision of UCITS. Such queries generally need to be submitted in writing to the Central Bank for consideration, and the timeframe within which the Central Bank will respond depends on the nature of the query received. The Central Bank is reluctant to deal with substantive or complex queries on a "no names" basis.

Face-to-face meetings are not typically required in respect of the authorisation of UCITS funds, unless there is something particularly significant associated with the project, but are more typically set up to discuss the establishment and authorisation of a UCITS management company.

3.4 Operational Requirements for Retail Funds
Retail investment funds in Ireland are limited not only in terms of the types of assets that can be invested in but also in terms of the exposure to particular securities and issuers. Focusing specifically on the requirements relating to UCITS, such investment funds are permitted to invest in transferable securities and other liquid financial assets but are not permitted to invest directly in real estate or commodities, nor to engage in physical short selling. Investments by UCITS in other open-ended collective investment schemes that are not established as UCITS are subject to additional requirements, including requirements

relating to those underlying funds being subject to equivalent supervision and investor protection measures. Investment in closed-ended funds by UCITS is limited to circumstances where the underlying closed-ended funds meet the definition of a transferable security and fulfil certain corporate governance and regulatory requirements.

As detailed in **3.3.1 Retail Funds Regulatory Regime**, UCITS are subject to a more stringent regulatory regime than AIFs in terms of permitted investments and investment restrictions.

Whether established as AIFs or UCITS, Irish investment funds are required to appoint an Irish-based depositary that is responsible for the safekeeping of the fund's assets. Any entity acting as a depositary to Irish investment funds is required to be authorised by the Central Bank to provide such services. In addition, there are rules relating to the holding of investors' money in collection accounts and umbrella cash accounts.

Details of how an investment fund's assets are valued need to be set out in the fund's constitutional document, and should comply with the valuation rules set out in the UCITS Regulations or the AIF Rulebook, as relevant.

Details of the potential risks relevant to the investment fund are required to be disclosed in the fund's prospectus.

Rules relating to insider trading, market abuse and transparency are generally only applicable to Irish listed funds.

As Irish regulated entities, Irish investment funds (whether AIFs or UCITS) are subject to anti-money laundering and counter terrorism financing (AML/CFT) legislation. As Irish investment funds generally delegate investor services activities to an administrator, such funds need to be aware of the administrator's policy in relation to AML/CFT, in addition to having their own policy in place.

3.5 Retail Fund Finance
Retail investment funds in Ireland have limited borrowing powers. RIAIFs are not permitted to borrow an amount exceeding 25% of the fund's net assets, while UCITS are only permitted to borrow up to 10% of the fund's net assets on a temporary basis. Typically, UCITS may use temporary borrowing facilities for short-term liquidity purposes – eg, to ensure the timely payment of redemptions, particularly where less liquid investments are being disposed of.

3.6 Retail Fund Tax Regime
The tax regime for retail investment funds in Ireland does not differ from that applicable to AIFs, as further detailed in **2.6 Alternative Funds Tax Regime**.

The IREF regime referred to in **2.6 Alternative Funds Tax Regime** does not apply to Irish retail investment funds regulated as UCITS funds.

4. Legal, Regulatory or Tax Changes

4.1 Recent Developments and Proposals for Reform
There are a number of European initiatives that will have an impact on Irish domiciled funds to promote supervisory convergence at a European level, including in the areas of sustainable finance, performance fees and the supervision of costs, but they are not considered in detail in this chapter as they are at a European level.

The Central Bank has issued (i) guidance, Guidance on Share Class Features of Closed Ended QIAIFs; and (ii) a consultation paper – CP130: Treatment, Correction and Redress of Errors in Investment Funds – on which feedback from the Central Bank is awaited, which may be of particular relevance.

The Investment Limited Partnerships (Amendment) Act 2020 was signed into law on 23 December 2020 and amends the Investment Limited Partnership Act 1994, the legislation governing Irish ILPs. The enactment of this legislation makes Ireland a more attractive domicile for private equity and venture capital funds. The key changes being introduced are as follows:

- to permit the establishment of umbrella ILPs that are divided into separate sub-funds with segregated liability between those sub-funds;
- to clarify and broaden the safe harbours that allow limited partners to undertake certain actions without being deemed part of the management of the ILP and thereby losing the benefit of limited liability;
- to remove the requirement for all limited partners to approve amendments to the limited partnership agreement;
- to streamline the process relating to the contribution and withdrawal of capital to and from the ILP;
- to introduce beneficial ownership obligations for funds structured as ILPs and common contractual funds; and
- to align the legislation with standard provisions applicable to other Irish investment fund structures.

Walkers is a global, integrated and market-leading financial services law firm that practises law across six jurisdictions and has ten offices across the Americas, EMEA and Asia. The Irish office provides market-leading Irish legal, tax, listing and professional services solutions to local and international financial institutions, investment managers, hedge funds, private equity groups and corporations. Expertise includes asset management, corporate and M&A, employment, finance and capital markets, insolvency and dispute resolution, investment funds, real estate, regulatory and tax, as well as listings and fiduciary services. Walkers' Asset Management and Investment Funds Group in Ireland offers expert advice and commercial solutions to many of the world's most prominent asset managers, fund promoters and institutional investors, on a wide range of investment fund strategies such as private equity, hedge and real estate as well as more traditional retail-focused products such as UCITS and retail AIFs. The experienced team is well placed to advise on the commercial and regulatory implications of the establishment and operation of investment fund structures in Ireland. The firm provides legal advice on all aspects of investment funds, such as fund formation (including ICAVs), restructuring, re-domiciliation, and termination and liquidation. The firm's independent corporate services offering, Walkers Professional Services, provides a broad range of corporate, fiduciary and administration services to structured and asset finance vehicles.

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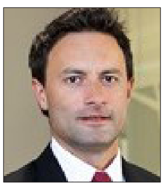

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