Things to Consider When Establishing Your Irish Fund Structure

Before establishing your fund in Ireland, there are a number of steps to consider which are primarily driven by the fund structure selected. We have outlined below what we believe are the key decisions Investment Manager's need to consider in order to select the most effective fund structure for your requirements.

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Select Fund Structure

- **Select Legal Structure**
- **Select Fund's Service Providers**
- **CBI Approval Process**

I. Select a Fund Structure – AIF or UCITS?

There are a number of factors to consider when making a decision on whether the AIF or UCITS is the most appropriate fund structure:

1. location of target investors
2. Investment strategy
3. Liquidity profile of the fund's potential portfolio
4. Liquidity requirements of target investors

1. Select a Legal Structure

What are your options:

1. UCITS

UCITS (Undertakings for Collective Investment in Transferable Securities) are open-ended funds and may be established as a Unit Trust, ICAV, Common Contractual Fund (CCF) or Variable or Fixed Capital Companies.

(UCITS) were first introduced in Europe in 1985. The first UCITS European directive set out a common set of rules for the cross-border distribution of collective investment schemes via the European Passport. UCITS were designed with the retail consumer in mind, ensuring appropriate levels of protection for investors.

The key common aspects of UCITS funds are that they must be open-ended and liquid (Investors must be permitted to redeem their shares at least twice each month). The flexibility of UCITS is evident in that they may be set up as a single fund or as an umbrella fund that is comprised of several ring-fenced sub-funds, each with a different investment objective and policy. Each sub-fund is treated as a separate entity, with the assets and liabilities segregated from other sub-funds within the umbrella UCITS fund. Management of each sub-fund can be performed by a different investment manager and sub-funds are permitted to invest in each other, subject to certain investment restrictions.

UCITS funds can be used for a wide range of strategies and asset classes. Typically Exchange Traded Funds (ETFs) and Money Market Funds (MMFs) are set-up as UCITS funds.

2. AIFMD

AIFMD (Alternative Investment Fund Managers Directive), implemented in July 2013, has transformed the EU regulatory landscape in the alternatives space. All non UCITS funds, or Alternative Investment Funds (AIFs) are covered by AIFMD which has introduced new organisational, operational, transparency and conduct of business requirements on AIFMs and the funds they manage.

Ireland was the first jurisdiction to provide a regulated framework for AIFs and remains at the forefront of developments with the implementation of AIFMD. The AIFMD framework is in many ways reflective of pre-existing requirements in Ireland relating to supervisory oversight, an independent depositary, corporate governance, valuations and investor disclosure.

The Central Bank of Ireland (CBI) released the "AIF Rulebook" in 2014, detailing the regime applicable to Irish regulated AIFs, AIFMs and their service providers under the "AIF Rulebook". The Rulebook maintains the essential features and advantages of Ireland's regulated AIF offering while combining these with the new AIFMD framework. There are two main types of AIF in Ireland, the Qualifying Investor AIF, and the Retail Investor AIF.

3. Small AIFM

An alternative to a full AIFM registration is a small AIFM. An AIFM is defined as a small AIFM where the AIFM manages portfolios assets under management:

(a) including any assets acquired through use of leverage, in total do not exceed a threshold of €100 million; or

(b) in total do not exceed a threshold of €500 million where the portfolios of AIFs consist of AIFs that are unleveraged and where investors cannot redeem their interest in the first five years after investing.

Small AIFMs are required to be registered with, or authorised by, the CBI, although they may opt in to the full requirements of the AIFMD. An authorised sub-threshold AIFM is referred to as a "small authorised AIFM" and a registered sub-threshold AIFM is referred to as a "small registered AIFM". Both types of AIFM are required to comply with the requirements set out in Article 3 of AIFMD (which mainly relate to reporting) and in addition, small authorised AIFMs will be subject to existing regulatory requirements.

4. Irish Collective Asset-Management Vehicle (ICAV)

The ICAV structure was launched in March 2015 and was designed to create a fund structure which permits the co-mingling of both US and non-US investors. A large umber of ICAV's have been created in the period since March 2015 and appears to have gained traction with Investment Managers as an effective fund structure. Recently a potential issue has been identified which may impact on the ICAV's ability to "Check the Box" from a US tax perspective.

The ICAV is a corporate vehicle designed specifically for Irish investment funds, it sits alongside the public limited company (plc), and provides a tailor-made corporate fund vehicle for both UCITS and AIFs. It is not impacted by amendments to certain pieces of company legislation that are targeted at trading companies.

Non-Irish investment companies can migrate into Ireland and become an ICAV as part of a single process. The purpose of the vehicle is to minimise the administrative complexity and cost of establishing and maintaining collective investment schemes in Ireland.

5. Qualifying Investor AIF (QIAIF)

The Qualifying Investor AIF is a regulated investment fund suitable for well-informed and professional investors. As the QIAIF is not subject to any investment or borrowing restrictions, it can be used for the widest range of investment purposes.

AIFs can be established as a Unit Trust, ICAV, Common Contractual Fund (CCF), Investment Company or Investment Limited Partnerships.

TYPES OF FUND STRUCTURES AVAILABLE

Investment Company/Variable Capital Company

Companies are registered under a series of Acts called the Companies Acts. The shareholders of the company enjoy limited liability. The main aim of funds set up as investment companies is the collective investment of its funds and property with the aim of spreading investment risk. A company is managed for the benefit of its shareholders.

Variable capital companies can repurchase their own shares and their issued share capital must at all times be equal to the net asset value of the underlying assets. All UCITS funds and many AIFs are marketed to the public, therefore most companies are set up as public limited companies.

Unit Trust

Unit Trust is a contractual fund structure constituted by a trust deed between a trustee and a management company (manager) under the Unit Trusts Act, 1990. A Unit Trust is not a separate legal entity and therefore the trustee acts as legal owner of the fund's assets on behalf of the investors. Since the Unit Trust does not have legal personality, it cannot enter into contracts.

A separate management company is always required and managerial responsibility rests with the board of directors of the management company. This separate management company can also be used to manage other UCITS and AIFs. The trust deed is the primary legal document which constitutes the trust and it sets out the various rights and obligations of the trustee, the management company and the unit holders.

Investment Limited Partnership (ILP)

An investment limited partnership is a partnership of two or more persons having as its principal business the investment of its funds in property of all kinds and consisting of at least one general partner and at least one limited partnership. The limited partner is equivalent to the shareholder in a company while the general partner would be the equivalent of the Management Company in a unit trust.

The main advantage of a limited partnership is that the partnership does not have an independent legal existence in the way that a company does. All of the assets and liabilities belong jointly to the individual partners in the proportions agreed in the partnership deed. Similarly the profits are owned by the partners. Each partner is entitled to use any tax reliefs and allowances the partnership is entitled to as agreed between each partner, subject to any tax rules governing the allocation of the reliefs and allowances.

An ILP can only be established as an AIF and is authorised and regulated by the Central Bank.

Common Contractual Fund (CCFs)

A CCF is a contractual arrangement established under a deed, which provides that investors participate as co-owners of the assets of the fund. The ownership interests of investors are represented by 'units', which are issued and redeemed in a manner similar to a unit trust. The CCF is an unincorporated body, not a separate legal entity and is transparent for Irish legal and tax purposes.

As a result, investors in a CCF are treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares or units in an entity which itself owns the underlying investments. A CCF can be established as a UCITS fund (Undertakings for Collective Investment in Transferable Securities) or an AIF (Alternative Investment Fund). Tax transparency is the main feature, which differentiates the CCF from other types of Irish funds. The CCF is authorised and regulated by the Central Bank.

A number of investment manger's have successfully launched CCF's but the structure appears most relevant to a specific range investment strategies.

II. Selection of the Fund's Service Providers

For all Irish funds the following service providers must be selected and engaged in advance of fund approval. Bridge can assist clients in identifying and selection of the most appropriate service providers.

1. **Legal firm**
2. **An Irish based depository**
3. **An Irish based administrator**
4. **An Irish regulated external auditor**
5. **A management company (required by Unit Trust and CCF)**
6. **Two Irish resident non-executive directors**
7. **In the case of a UCITS, the investment manager must also be approved by the CBI**
8. **For AIFs the investment manager must obtain approval as an AIFM from the CBI**

Approval by the Regulator in Ireland (CBI)

The Central Bank of Ireland (CBI) is responsible for the authorisation and supervision of all collective investment schemes (i.e. both UCITS and AIFs). The authorisation process varies depending on the fund type selected.

For UCITS Only

The CBI is designated in the Regulations as the competent authority with responsibility for the authorisation and supervision of UCITS. The authorisation process for UCITS has two elements:

- the approval of service providers as noted above for both UCITS and AIFs.
- the approval of UCITS documentation - applications to the CBI must include the following documentation:
    - prospectus
    - instrument of incorporation
    - agreements with service providers
    - business plans
    - Risk Management statement (RMP) if investment strategy requires the use of derivatives
    - fund's Key Investor Information Document (KIID).

KIID is a two-page concise document which must be translated into the language of the investor and must provide basic detail on the fund's investment strategy, charges, past performance over 10 years and risks/rewards.

The fund launch process including approval by the CBI will take between 12 and 14 weeks from the point the fund's legal representative is selected.

For AIFs Only

Setting up an Irish regulated AIF involves:

- the identification of the key parties to the fund who must be approved by the CBI as noted above for both AIFs and UCITS. The Alternative Investment Fund Manager (AIFM), directors, investment manager/advisor, fund administrator, depositary and auditor must all be pre-cleared by the CBI.
- the submission of a detailed application form to the CBI, including the prospectus, the constitutional documents of the fund and the material contracts with the various parties to the fund (e.g. Depositary Agreement, Administration Agreement).

The time frame for the approval of a Qualifying Investor Alternative Investment Fund (QIAIF) can be as short as 24 hours. Other funds can be approved in as little as 12 to 14 weeks.

Alternative Investment Fund Manager (AIFM) Authorisation

For entities seeking authorisation as an AIFM, the application process should take no longer than 3 months.

1. Fund Re-Domiciliation

Since September 2010, it is possible for investment funds established and operating in certain jurisdictions other than Ireland to re-register in Ireland. This fund re-domiciliation process ensures minimal disruption to day-to-day management and distribution of the fund.

This process ensures no adverse Irish tax consequences and provides a mechanism to potentially reduce foreign tax consequences that could ordinarily arise on a re-domiciling process. Funds domiciled in the following jurisdictions can avail of the new re-domiciling framework:

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

The legal framework seeks to avoid the imposition of unnecessary procedural hurdles and expressly recognises that, for Irish law purposes, a migrating fund will not be treated in Ireland as a new entity, so that its existing identity and track-record will be preserved. The new process also ensures that the administrative aspects of creating a new fund are eliminated, as are any tax issues that previously may have arisen on moving assets between funds.

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