Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Investment Funds 2023

Definitive global law guides offering comparative analysis from top-ranked lawyers

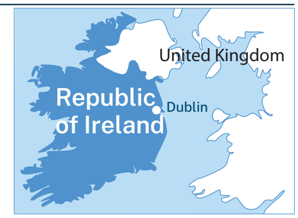
Ireland: Law & Practice

Nicholas Blake-Knox, Jonathan Sheehan, Eimear Keane and Joe Mitchell
Walkers

practiceguides.chambers.com

IRELAND

Law and Practice



Contributed by:
Nicholas Blake-Knox, Jonathan Sheehan, Eimear Keane and Joe Mitchell
Walkers see p.24

Contents

1. Market Overview

1.1 State of the Market

The latest statistics published by the Central Bank of Ireland show that the net asset value (NAV) of Irish-domiciled funds exceeded EUR3.6 trillion at the end of the third quarter of 2022, representing a 10% decrease (EUR426 billion) from EUR4.06 trillion at the end of 2021, largely driven by re-valuations. The number of Irish-domiciled funds (including sub-funds) grew from 8,372 at the end of 2021 to 8,566 at the end of the third quarter of 2022.

In terms of the number of Irish-domiciled funds by category, Irish-domiciled alternative investment funds (AIFs) (including sub-funds) reached 3,321 at the end of the third quarter of 2022 of which Irish-domiciled qualifying investor alternative investment funds ("QIAIFs") comprised 3,051, and the total number of Irish-domiciled undertakings for collective investment in transferable securities (UCITS) (including sub-funds) reached 5,245.

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 retail investor alternative investment funds (RIAIFs) and QIAIFs, with the vast majority of Ireland-domiciled AIFs being established as QIAIFs. As RIAIFs are generally targeted at retail investors, this type of fund will be discussed in **3. Retail Funds**.

Five legal structures are currently available when establishing a regulated AIF in Ireland:

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

Investment Company

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.

ICAV

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.

Unit Trust

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.

CCF

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 seeking 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.

ILP

The Investment Limited Partnerships (Amendment) Act 2020 took effect in early 2021, amending the legislation governing ILPs, Ireland's regulated investment funds partnership product. These amendments have enhanced the product offering by bringing it more in line with the partnership structures in other fund jurisdictions and introducing best in class features.

While partnership structures are generally used for investment funds with strategies relating to private equity or debt, real estate, infrastructure or other types of illiquid assets, the ILP is a flexible structure that can be utilised by asset managers seeking to establish either open-ended or closed-ended investment funds through a regulated partnership structure. An ILP can now be structured as an umbrella fund, offering greater flexibility for those seeking to establish funds in Ireland. Investors in an ILP hold interests in the limited partnership by entering into a partnership agreement with the general partner as limited partners.

General

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, CCF or ILP 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 certain restrictions on Irish alternative funds being structured as either open-ended or closed-ended. For example, a loan originating QIAIF must be closed-ended and the Central Bank will only authorise property funds structured as (i) closed-ended or (ii) open-ended with limited liquidity as per the Central Bank's AIF Rulebook.

AIFs that have the ability to implement a redemption settlement period of more 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 Alternative Investment Fund Managers Directive (AIFMD) marketing passport.

The majority of investment managers and investment advisers appointed to act for Irish funds are domiciled in other jurisdictions, as 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; 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 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 that require a pre-submission (namely QIAIFs proposing to invest in Irish property assets or in crypto-assets), there is a fast-track authorisation process under which QIAIFs can 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 have received any requisite approvals from the Central Bank to act for Irish-domiciled funds. 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 (not subject to any pre-submission requirements) 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

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 disclosing key information about the investment strategy, the parties involved and the potential risks relevant to investing in the fund. Certain UCITS and AIFs 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 amended Packaged Retail and Insurance-based Product (PRIIPs) Regulation where those products are made available to investors in the EEA that are not classified as professional investors under MiFID. The rules concerning the UCITS key investor information document (KIID) still apply in certain specific situations.

Irish investment funds are also required to provide financial statements and an annual report on the financial state of the entity to investors. 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 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, including details on 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 NAV.

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds

Investors in QIAIFs are not confined to any particular geographic region, and 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, a wide variety of institutional investors invest in such funds, 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. QIAIFs require a minimum subscription of EUR100,000, although exemptions 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

The AIFMD was transposed in Ireland by the European Union (Alternative Investment Fund Managers) Regulations 2013, as amended (the "AIFM Regulations"), and is the key legislation governing the regulation of AIFs in Ireland. It 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.

The Central Bank does not set any investment, borrowing or leverage limits for QIAIFs, except for loan origination QIAIFs and QIAIFs proposing to invest over 50% of the portfolio in directly or indirectly held Irish property assets. The activities in which an investment fund established to originate loans can be involved are limited, as detailed in **2.4 Operational Requirements**.

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, regulated and supervised by the Central Bank.

While Irish investment funds structured as investment companies and ICAVs may be self-managed, there has been a move towards 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 state competent authority. 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 or of a general partner of an ILP. The process involves submitting an individual questionnaire to the Central Bank for consideration. Directors and 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 apply, 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, other than the section relating to externally managed funds.

Prime brokers may be appointed to provide services directly to an AIF and – provided that their services 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 depends on the entity's country of establishment. 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, the United States and the United Kingdom.

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 externally appointed AIFMs, UCITS management companies or credit institutions authorised under Directive 2006/48/EC with approval to provide portfolio management under MiFID. 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 was required to be submitted to the Central Bank in such circumstances.

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 that require a pre-submission (namely QIAIFs proposing to invest in Irish property assets or in crypto-assets), a fast-track authorisation process applies to QIAIFs, whereby new investment funds can be authorised by the Central Bank within 24 hours of the application for authorisation of the fund being submitted. 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, it generally takes between eight and 12 weeks for the establishment and authorisation of a new QIAIF umbrella (not subject to any pre-submission requirements). Sub-funds of an existing umbrella structure can be established more quickly, depending on the circumstances.

2.3.5 Rules Concerning Pre-marketing of Alternative Funds

The AIFM Regulations provide for pre-marketing in Ireland in accordance with the Cross-Border Distribution Directive ((EU) 2019/1160) transposed into Irish law on 6 August 2021, whereby an EU AIFM or certain third parties on behalf of an EU AIFM can engage in the provision of information or communication, directly or indirectly, on investment strategies or investment ideas in order to test investor interest, provided that such activity does not amount to an offer or placement to the potential investor to invest in that AIF.

The transposing legislation in Ireland did not introduce any additional regulatory measures.

2.3.6 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. Further requirements have been introduced by the framework for the cross-border distribution of investment funds (consisting of the Cross-Border Distribution Regulation ((EU) 2019/1156) and the Cross-Border Distribution Directive, including in relation to pre-marketing to AIFs, marketing communications and local facilities arrangements. The transposing legislation did not introduce any additional "gold-plating" measures. The 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.

2.3.7 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.

Marketing retail AIFs to retail investors in Ireland is permitted in limited circumstances, but an application must be submitted to the Central Bank before any marketing takes place.

The Cross-Border Distribution Regulation provides that all marketing communications addressed to investors should be identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF in an equally prominent manner. It also states that all information included in marketing communications needs to be fair, clear and not misleading. ESMA has published guidelines on marketing communication requirements, which came into force on 2 February 2022.

2.3.8 Marketing Authorisation/Notification Process

The marketing of EEA AIFs (including Irish AIFs) to professional investors in Ireland benefits from the notification process to the AIFM's home state competent authority as contemplated under AIFMD and transposed into Irish law.

An Irish AIFM seeking to market an AIF authorised in the EEA should submit an application to the Central Bank in accordance with Regulation 32 of the AIFM Regulations. A non-Irish AIFM seeking to market a non-Irish AIF authorised in the EEA in Ireland should submit an application to its own competent authority. Upon transmission of the notification file to the Central Bank, the AIFM may commence marketing in Ireland. An Irish AIFM or an AIFM authorised in another EEA member state seeking to market a non-EEA AIF in Ireland should submit an application in accordance with Regulation 37 of the AIFM Regulations. A non-EEA AIFM seeking to market AIFs in Ireland should submit an application in accordance with Regulation 43 of the AIFM Regulations.

The Central Bank of Ireland does not impose additional requirements in relation to passported EEA AIFs other than those laid down in the AIFMD. The Central Bank does not impose local service provider requirements, such as a local representative and/or paying agent, nor does it levy any regulatory fees (either initial or ongoing) to avail of marketing rights under the passport.

2.3.9 Post-marketing Ongoing Requirements

The AIFM must give written notice of a material change to any of the particulars communicated in the original passport notification to the competent authorities of its home state at least one month before implementing a planned change or, where it is not possible to do so, immediately after such an unplanned change has occurred.

Similarly, a material change to the details of marketing in accordance with Regulation 43 of the AIFM Regulations should be notified by the non-EU AIFM to the Central Bank without delay.

In order to cease marketing a passported AIF in Ireland, a notification to de-register should be made to the competent authority of the AIFM's home state. From the date of de-notification, a three-year "black-out" period is triggered, during which any pre-marketing of the relevant AIF or in respect of similar investment strategies or investment ideas is prohibited.

2.3.10 Investor Protection Rules

Only qualifying investors can subscribe for shares, units or interests in a QIAIF – see **2.2.3 Restrictions on Investors**.

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.

2.3.11 Approach of the Regulator

Under the fast-track process, applications for the authorisation of QIAIFs, approvals of new sub-funds for existing umbrella QIAIFs and post-authorisation amendments for QIAIFs are processed within 24 hours of receipt, with the exception of submissions relating to limited asset classes (as detailed in **2.1.2 Common Process for Setting Up Investment Funds**), for 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 time-frame 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

AIFs being established as money market funds are subject to the requirements of the EU Money Market Funds 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, and participations in lending and 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 QIAIFs or RIAIFs 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. However, an Irish-based depositary of assets other than financial instruments (DAoFI) (also known as a real asset depositary) may be appointed to act for a specific type of QIAIF (those funds that have no redemption rights exercisable for at least five years from the date of initial investment and that generally do not invest in financial instruments that can be held in custody). Any entity acting as a depositary or DAoFI to Irish investment funds is required to be authorised by the Central Bank to provide such services. There are also 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 are required 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 NAV 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 they generally delegate transfer agency activities including investor services to an administrator, Irish investment 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 Fund Finance

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 NAV.

Lenders will typically take security as part of financing arrangements with QIAIFs, with the types taken depending 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 such challenges. 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, which will be either the Irish Companies Registration Office or the Central Bank, depending on the structure of the investment fund.

2.6 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 they do not invest in Irish real estate – see below with respect to the Irish real estate fund (IREF) regime. No stamp duty is payable on transfers of shares or units of an Irish investment fund (other than of an IREF in certain circumstances), and no subscription tax is payable on the issue of shares or units of an Irish investment fund.

If a declaration of non-Irish residence is provided to the fund, Irish tax is not payable on distributions or redemption payments to non-Irish resident 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.

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” (eg, distributions, redemptions and transfers) and on a “deemed disposal”, which 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 shares or units held by non-exempt Irish investors are worth 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 that provide, inter alia, access to favourable tax reclaim rates (comprehensive double taxation treaties are currently signed with 76 countries, of which 73 are in effect).

Finance Act 2021 introduced ATAD-compliant reverse hybrid mismatch provisions into Irish law for tax periods commencing on or after 1 January 2022. The provisions apply in limited circumstances only and should only be relevant to Irish regulated funds that are considered transparent for Irish tax purposes, such as a CCF or an ILP; see **4.1 Recent Developments and Proposals for Reform**.

Finance Act 2021 also introduced an ATAD-compliant interest limitation rule into Irish law in respect of companies within the charge to corporation tax for accounting periods commencing on or after 1 January 2022. While Irish regulated funds that are companies such as authorised investment companies and ICAVs may technically be within the scope of the provisions as they are subject to the IUT regime, they should not be subject to adjustment under the rule.

IREF Regime

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 (“IREF withholding tax”) at the rate of 20% of the “IREF taxable amount” must be deducted from payments made to unitholders 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 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 immovable 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.

Stamp duty

The transfer of units in an investment undertaking (such as an authorised ICAV or investment company), a CCF or an ILP is exempt from stamp duty, but it can apply in respect of the transfer of units in an IREF in certain circumstances.

3. Retail Funds

3.1 Fund Formation

3.1.1 Fund Structures

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

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.

UCITS in Ireland can adopt any of these fund structures, except the ILP.

The descriptions of each fund structure 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 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

A RIAIF or UCITS that is structured as an investment company or an ICAV 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 (see **2.1.2 Common Process for Setting Up Investment Funds**), 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.

Before a UCITS or a RIAIF is approved by the Central Bank, it is necessary to ensure that all service providers have obtained any requisite pre-approvals from by the Central Bank to act for Irish-domiciled investment funds. 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 receipt. The timeframe for the establishment and authorisation of a UCITS or a RIAIF generally ranges between 12 and 24 weeks.

3.1.3 Limited Liability

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 as a matter of Irish law, 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. UCITS and

RIAIFs may be required to provide a PRIIPs KID to investors prior to accepting their investment in the investment fund, in accordance with the recent changes in the requirements of the PRIIPs regime. Prior to accepting an investment in the fund, all UCITS must provide investors with either a PRIIPs KID or a KIID, which is a short form offering document summarising the key features of the UCITS. Although similar to the KIID, there are certain differences between the PRIIPs KID and the KIID and, under legislative measures, 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. The first annual reporting exercise to the Central Bank of PRIIPs KIDs produced by UCITS and RIAIFs is expected to take place in 2024.

Irish investment funds are also required to provide financial statements and an annual report on the financial state of the entity to investors. 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).

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 NAV.

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. According to figures published by the Central Bank, the total assets held by Irish UCITS at the end of October 2022 amounted to EUR2.876 trillion, a slight decrease of EUR5 billion from the end of the third quarter of 2021, largely driven by re-valuations.

The number of RIAIFs that have been established is relatively low, with either the UCITS or QIAIF being the product of choice for investors, depending on the investment strategy and target investors. There is no limit on the types of investors that can invest in RIAIFs, which 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

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

3.3 Regulatory Environment

3.3.1 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 (2009/65/EC). 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 provide information on the specific requirements relating to UCITS.

UCITS may invest in transferable securities and other liquid financial assets, but the following restrictions apply in terms of permitted investments:

- limits on the types of investments in which UCITS can invest;
- 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 where 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 NAV of the investment fund (known as the 5/10/40 rule), other than in the case of certain exempted categories of issuers where higher limits are applied.

As a type of AIF, RIAIFs are subject to the requirements of the AIFM Regulations and the AIF Rulebook. The regulatory regime applicable to RIAIFs is more restrictive than that for QIAIFs, but less restrictive than 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 and is precluded from investing more than 20% of its assets in any one issuer (the UCITS limit for both is 10%). RIAIFs are generally obliged to ensure that they are sufficiently diversified.

3.3.2 Requirements for Non-local Service Providers

All Irish investment funds (whether AIFs or UCITS) must have an Irish-domiciled depositary and administrator, which are regulated and supervised by the Central Bank.

While Irish investment funds structured as investment companies and ICAVs may be self-managed, there has been a move towards funds that are managed by a UCITS management company, in the case of a UCITS. 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 or of a general partner of an ILP, the process for which involves submitting an individual questionnaire to the Central Bank for consideration. Directors and 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 apply, 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 they enter into 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 respond to all subsequent comments within ten business days of receipt. 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 or such other asset classes as the Central Bank may prescribe from time to time, 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 receipt.

The establishment and authorisation of a UCITS or a RIAIF generally take between 12 and 24 weeks.

3.3.5 Rules Concerning Pre-Marketing of Retail Funds

There is no pre-marketing regime available for UCITS, nor for AIFs pre-marketing to non-professional investors.

3.3.6 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. As set out in **2.3.6 Rules Concerning Marketing of Alternative Funds**, additional requirements have been introduced for the cross-border distribution of investment funds, including in relation to marketing communications and local facilities arrangements. A prior notification period of one month for certain changes, including the marketing of additional share classes, was also introduced in respect of UCITS. In addition, the 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.

3.3.7 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.

The Cross-Border Distribution Regulation provides that all marketing communications addressed to investors should be identifiable as such and describe the risks and rewards of purchasing units or shares of a UCITS in an equally prominent manner. It also states that all information included in marketing communications needs to be fair, clear and not misleading. ESMA has published guidelines on marketing communication requirements, which came into force on 2 February 2022.

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, as set out in **2.3.7 Marketing of Alternative Funds**. 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, but an application must be submitted to the Central Bank before any marketing takes place.

3.3.8 Marketing Authorisation/Notification Process

Ireland has implemented Article 43 of the AIFMD, which permits the marketing of AIFs to retail investors. Accordingly, it is possible for a non-Irish AIF to market in Ireland to retail investors.

An AIF situated in another jurisdiction that proposes to market its units in Ireland to retail investors must apply to the Central Bank in writing, and may not conduct marketing in Ireland until it has received a letter of approval from the Central Bank. The Central Bank requires that such AIFs must be authorised by a supervisory authority to ensure the protection of unitholders; such protection must be equivalent to that provided under Irish laws, regulations and conditions governing Irish authorised RIAIFs.

The AIF shall include the following information for Irish retail investors in its prospectus:

- details of the facilities agent and the facilities maintained;
- provisions of Irish tax laws, if applicable; and
- details of the places where issue and repurchase prices can be obtained or are published.

When an AIF has received approval from the Central Bank to market units in Ireland to retail investors, the name of the AIF and the name and address of the facilities agent will be placed on a list of AIFs marketing in Ireland to retail investors, which will be made available to the public on request.

In order to market a UCITS in Ireland, a marketing application must be submitted to the competent authority in its home state for onward submission to the Central Bank prior to the commencement of marketing in Ireland. The notification file is submitted electronically, consisting of a standard form notification letter and fund documentation. It is transmitted from the home state authority to the Central Bank, which will issue its confirmation, after which the notified class(es) of the UCITS may be marketed in Ireland.

The prospectus of a UCITS that is authorised in another member state and markets its units in Ireland must provide the following information for Irish investors:

- details of the facilities agent and of the facilities that are being maintained; and
- relevant provisions of Irish tax laws.

3.3.9 Post-marketing Ongoing Requirements

Funds marketing their units in Ireland must comply with the law, regulations and administrative provisions in force in Ireland, including but not limited to the Consumer Protection Code of the Central Bank.

UCITS and AIFs marketing in Ireland to retail investors must submit a copy of their annual and any half-yearly reports to the Central Bank, as soon as they are available.

UCITS availing of the marketing passport in Ireland must keep the key fund documents in the notification file up to date., and must give one month's advance written notice to the host member state of any changes to be made to the classes that will be marketed in the host member state. Accordingly, changes in information in the original notification letter or a change in the share classes to be marketed should be submitted to the home and host state competent authorities at least one month before the implementation of the change.

UCITS must ensure compliance with the Central Bank UCITS Regulations regarding the contents, format and manner of presentation of marketing communications, including compulsory warnings and restrictions on the use of certain words or phrases and the advertising standards set out in Schedule 6 of the Central Bank UCITS Regulations.

A de-registration process (as detailed in **2.3.9 Post-marketing Ongoing Requirements**) must also be followed where it is proposed that UCITS will cease cross-border marketing pursuant to the marketing passport.

3.3.10 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.

3.3.11 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. 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

Retail investment funds in Ireland are limited in terms of not only the types of assets that can be invested in but also the exposure to particular securities and issuers. UCITS 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 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, which must be authorised by the Central Bank to provide such services. There are also 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 must 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 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 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 Tax Regime

The tax regime for retail investment funds in Ireland does not differ from that applicable to AIFs – see **2.6 Tax Regime**, although the IREF regime referred to therein 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

A number of European initiatives will have an impact on Irish domiciled funds, including proposed amendments to the AIFMD, the European Long-Term Investment Fund (ELTIF) Regulation and the UCITS Directive, and initiatives seeking to promote supervisory convergence at a European level, including in the areas of sustainable finance, the supervision of costs and fund valuations, but they are not considered in detail in this chapter as they are at a European level.

The Central Bank has recently published the following:

- CP152: own funds requirements for UCITS, ManCos and AIFMs authorised for discretionary portfolio management;
- Dear CEO letter on treatment of customers;
- Dear CEO letter on follow up on themed review of fund management companies' governance, management and effectiveness;
- industry letter on liability-driven investment funds;
- information note: sustainable finance and the asset management sector: disclosures, investment process and risk management; and
- macroprudential measures for the property fund sector.

The Investment Limited Partnerships (Amendment) Act 2020 amended the legislation governing Irish ILPs, making Ireland a more attractive domicile for private equity and venture capital funds.

Legislation transposing measures in relation to reverse hybrid mismatches (as provided under Council Directive (EU) 2016/1164 of 12 July 2016 (ATAD 1), as amended) into Irish law was signed on 21 December 2021. The purpose of the hybrid mismatch provisions is to tax income in Ireland that would otherwise go untaxed because an Irish entity is regarded as tax transparent in Ireland but tax opaque in the territory of a "relevant participator" (being, inter alia, a 50%+ partner in a partnership).

The provisions may be relevant to Irish regulated funds that are considered transparent for Irish tax purposes, such as a CCF or an ILP, and apply to tax periods commencing on or after 1 January 2022 in circumstances where a reverse hybrid mismatch outcome arises. Whether the rules apply will depend on whether the jurisdiction in which a participator (eg, a 50%+ partner in an ILP) is established considers the entity to be opaque for tax purposes and, if so, whether a "reverse hybrid mismatch outcome" arises – ie, the relevant profits or gains of the entity are not subject to domestic or foreign tax.

However, a "collective investment scheme" (as defined) is expressly excluded from the reverse hybrid rule. Thus, the rule should not apply if, for example, there is no participator in an Irish transparent fund, or the fund is widely held and holds a diversified portfolio of assets such as to be considered a "collective investment scheme" (as defined). In practice, the rule is expected to have limited application to Irish regulated funds.

If a reverse hybrid mismatch arises in respect of an Irish regulated fund, the fund would be liable to corporation tax in Ireland in respect of its profits or gains that are attributable to the relevant participator and are not otherwise subject to domestic or foreign tax as if the business carried on by the fund was carried on by a company resident in Ireland. In such circumstances, the legislation permits the reverse hybrid entity to appropriate or cancel such portion of units of the relevant participator as are required to meet the tax liability arising on the profits attributable to that participator.

There has been a recent change to the VAT rules with respect to the management of certain investment undertakings. Finance Act 2022 introduced legislative changes bringing the management of UCITS and AIFs that are authorised by the competent authority of another EU member state within the scope of the Irish VAT exemption for management of specified investment funds. Fund managers and other fund service providers in Ireland providing management services to such funds should no longer be entitled to VAT recovery on costs relating to this activity.

Walkers is a 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 Irish legal, tax, listing and professional services solutions to local and international financial institutions, investment managers, hedge funds, private equity groups and corporations. Walkers' experienced asset management and investment funds group offers expert advice and commercial solutions to many prominent asset managers, fund promoters and institutional investors, on 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. It is well placed to advise on the commercial and regulatory implications of the establishment and operation of investment fund structures in Ireland. 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.

Authors

Nicholas Blake-Knox is a partner and head of the asset management and investment funds group at Walkers. He advises asset management firms on asset management and investment fund-related matters, such as the establishment, authorisation and operation of all types of Irish investment funds. Nicholas has experience across a wide range of asset classes and investment strategies, with particular expertise in advising managers of fixed income and debt-focused investment strategies, as well as less liquid alternative strategies. He currently sits on the Alternative Investment Fund Working Group and Brexit Steering Group at Irish Funds. He has spoken at a wide range of investment fund conferences, and is a member of the faculty of the Certified Investment Fund Director Institute.

Jonathan Sheehan is the managing partner of Walkers' Ireland office, where he heads the firm's tax group and advises on all manner of financial, corporate and real estate transactions. Jonathan acts for a wide range of domestic and international clients, including financial institutions, investment banks, arrangers, private equity groups, fund managers and administrators. He is an AITI Chartered Tax Adviser and a member of the Law Society of Ireland and the Dublin Solicitors Bar Association. Jonathan is also a member of the tax committee of the Irish Debt Securities Association and the vice-chair of the International Tax Working Group in Irish Funds.

Eimear Keane is a partner in the asset management and investment funds group at Walkers. She is highly experienced in advising a broad spectrum of EU and non-EU managers on establishing and operating management companies. Eimear advises on the establishment, authorisation, operation and distribution of all types of Irish investment funds, including UCITS, QIAIFs, RIAIFs, fund of funds, master-feeder structures and closed-ended funds. She also has a particular interest in ESG and fintech..

Joe Mitchell is a senior associate in Walkers' asset management and investment funds practice. He is based in the Ireland office, where he manages the legal resources and know-how for the team and provides updates on legal and regulatory developments.

Walkers

The Exchange
George's Dock
IFSC
Dublin 1
Ireland

Tel: +353 1 470 6600
Fax: +353 1 470 6601
Email: info@walkersglobal.com
Web: www.walkersglobal.com

Walkers

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com