Matheson

Establishing a Private Equity Fund in Ireland

Winner, Ireland Law Firm of the Year 2019, The Hedge Fund Journal

Number One Ranked Irish Law Funds Practice acting for 30% of Irish Domiciled Investment Funds by AUM, Monterey Insight Ireland Fund Survey 2018

Top 20 Most Innovative Law Firm in Europe, Financial Times 2018

This brochure provides information in relation to the establishment of private equity funds in Ireland, the fund vehicles available for use, the relevant tax treatment and the steps necessary to launch a private equity fund. This brochure also outlines the advantages of Ireland as a domicile for private equity funds.

About Matheson

Matheson's primary focus is serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Our clients include the majority of the Fortune 100 companies. We also advise 7 of the top 10 global technology brands and over half of the world's 50 largest banks. We are headquartered in Dublin and have offices in Cork, London, New York, Palo Alto and San Francisco. More than 700 people work across our six offices, including 96 partners and tax principals and over 470 legal and tax professionals.

Our strength in depth is spread across more than 30 practice areas within the firm, including Finance and Capital Markets, Corporate, International Business, Mergers and Acquisitions, Technology and Innovation, Intellectual Property, Insolvency and Corporate Restructuring, EU and Competition, Asset Management and Investment Funds, Employment, Pensions and Benefits, Commercial Real Estate, Litigation and Dispute Resolution, Healthcare, Insurance, Tax, Private Client, Energy and Infrastructure, FinTech and Life Sciences. We work collaboratively across all areas, reinforcing a client first ethos among our people, and our broad and interconnected spread of industry and sectoral expertise allows us to provide the full range of legal advice and services to our clients.

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

The Asset Management and Investment Funds Department

Matheson is the number one ranked funds law practice in Ireland, acting for 30% of Irish domiciled investment funds by assets under management as at 30 June 2018. Led by 12 partners, the practice comprises 50 asset management and investment fund lawyers and professionals in total. The group's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by Chambers Europe, the European Legal 500 and the IFLR1000, and the team is specifically recognised for its abilities with respect to complex mandates.

We are consistently involved in influencing developments in the asset management and investment funds industry in Ireland and Europe. Our partners and associates hold key industry appointments on various committees and taskforces of the Irish funds industry association (Irish Funds). The head of our team, Tara Doyle, was an elected member of the Irish Funds Council from 2015 to 2019 and was Chair of Irish Funds in 2017 / 2018. We also hold an appointment to the Irish Prime Minister's International Financial Services Centre Funds Working Group and, at European level, a Matheson partner sits on the UCITS working group, the ETFs working group and the Benchmarks working group of the European Fund and Asset Management Association.

The Asset Management and Investment Funds Department has significant experience in advising on private equity structures for large institutional asset managers and specialist private equity managers, including the following structures:

- Private Equity Fund of Funds and Feeder Funds – gaining exposure to structures in Cayman, Jersey, Bermuda, Guernsey and a number of other domiciles worldwide
- Renewable Energy Funds
- Bank Loan Funds
- Loan Origination Funds
- Irish, European and US Commercial and Residential Property Funds
- Infrastructure Funds
- Funds gaining exposure to structured debt products
- Funds gaining exposure to pharmaceutical royalty streams
- Life Settlement Funds

We offer a comprehensive legal service to clients. In addition to asset management advice (including tax advice) on the structuring and establishment of private equity funds, the group can draw on the resources of:

- a regulatory risk management and compliance unit;
- a specialist outsourcing group and company secretarial unit;
- a dedicated derivatives team; and
- a corporate department advising on the corporate, regulatory and M&A aspects of our clients' businesses in Ireland.

This results in our having an unrivalled capacity to provide combined asset management, tax, regulatory, corporate and derivatives advice to private equity clients.

Private Equity Transactions

Our corporate department contains a dedicated private equity team made up of lawyers with extensive Irish and international experience in structuring and executing acquisition, financing and exit transactions, and advising on the leading private equity deals in the Irish market. We represent a broad range of Irish and international financial investors, ranging from private equity houses, banks and other financial institutions to specialist infrastructure and private equity property funds and corporate venture investors. Our team also represents and advises target companies and management teams on transactional and governance matters.

Our private equity team offers clients local market knowledge and is supported by teams of market-leading tax and anti-trust, real estate, employment, pensions, intellectual property, information technology, competition, regulatory and litigation experts as well as teams offering the full

range of finance support including all aspects of banking and restructuring transactions by our banking and finance group, who are acknowledged market leaders in debt financing transactions. In conjunction with lawyers in our offices in Cork, London, New York, Palo Alto and San Francisco, we have advised bidders on more cross-border deals involving Ireland than any other law firm in the last 10 years.

1 Structuring a Private Equity Fund in Ireland

1.1 Irish Regulatory Framework for Private Equity Funds

The regulatory framework within which a private equity fund established in Ireland can sit is, in the vast majority of cases, best served by the highly flexible Qualifying Investor Alternative Investment Fund ("**QIAIF**").

As Ireland's most popular alternative investment fund regulatory classification, QIAIFs offer a trusted and efficient route for private equity fund managers to avail of the marketing benefits of the Alternative Investment Fund Managers Directive (the "**AIFMD**"). While offering the characteristics and flexibility of the typical private equity fund product, QIAIFs are authorised and regulated by the Central Bank of Ireland ("**Central Bank**") and offer the AIFMD compliant standard which is increasingly sought by investors.

1.2 Irish Fund Vehicles for Private Equity Funds

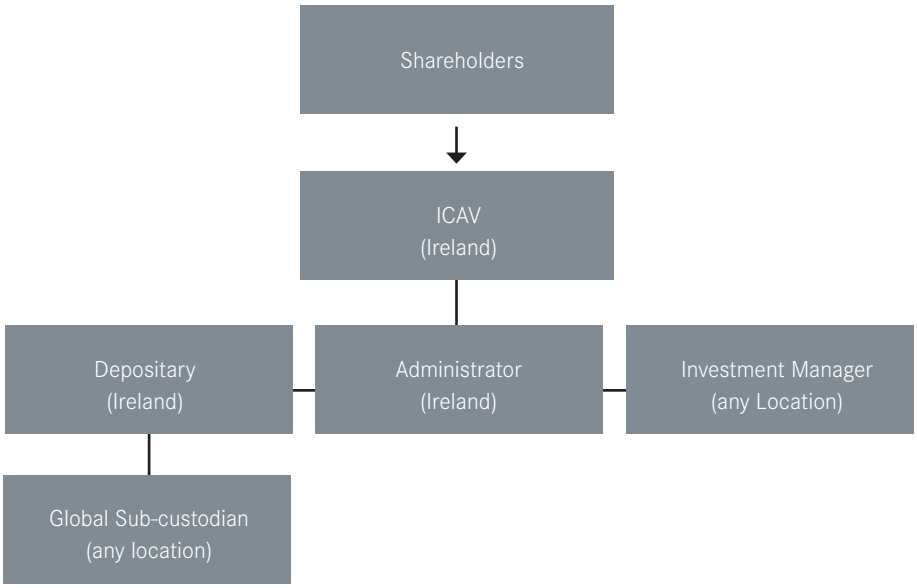
Legal vehicles through which a private equity QIAIF can be structured include the ICAV, the investment company, the investment limited partnership, the unit trust and the common contractual fund. For the purposes of this briefing note, we proceed with an overview of a private equity QIAIF established as an ICAV pursuant to the Irish Collective Asset-management Vehicle Act 2015, as an investment limited partnership pursuant to the Investment Limited Partnerships Act 1994 ("**ILP Act**") or as a unit trust pursuant to the Unit Trusts Act 1990 as these are the best positioned and, in the case of the investment limited partnership ("**ILP**"), the most recognisable and widely used investment fund vehicles globally for private equity funds. Each of the QIAIF vehicles is considered more fully in our "Establishing a Qualifying Investor Alternative Investment Fund in Ireland" Brochure.

ICAV

An ICAV is an entity with distinct legal personality which is managed and controlled by its board of directors and can enter into contracts in its own name. The assets are the property of the ICAV, and each investor holds shares in the ICAV. A depositary is appointed to safe-keep the assets on behalf of the ICAV. An investment fund established as an ICAV may be self-managed, or appoint a management company. The paid up share capital of the ICAV must at all times equal the net asset value of the ICAV; the shares of which have no par value. The constitutional document of an ICAV is the instrument of incorporation. Liability of shareholders in a private equity fund established as an ICAV is limited. An ICAV is required to have two Irish resident directors.

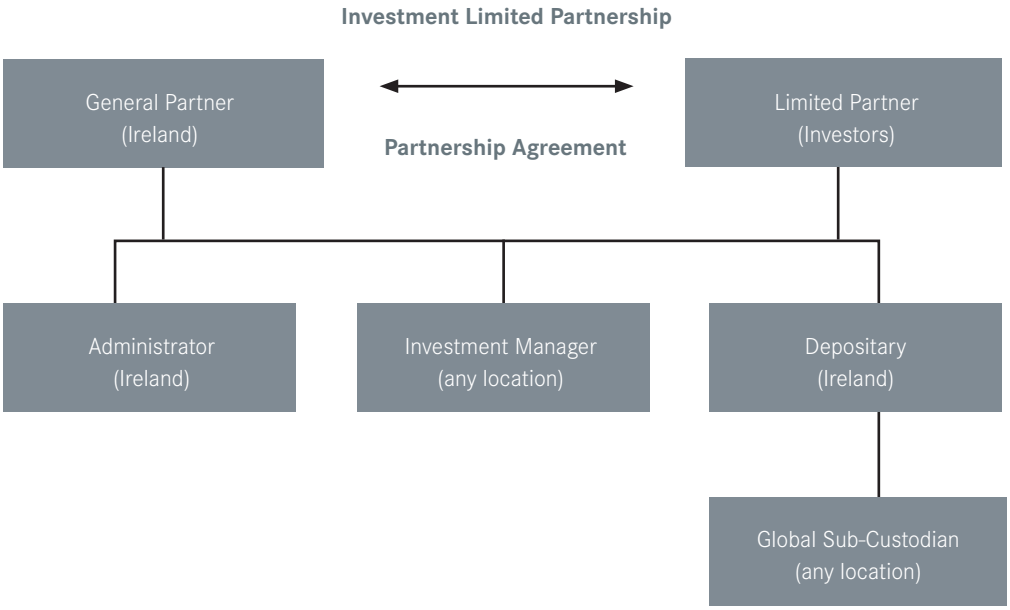
A typical ICAV structure is illustrated below.

ICAV with no Irish Domiciled Management Company



Investment Limited Partnership

An ILP is created by contract between the general partner(s) (at least one of which must be Irish and such general partner must have two Irish resident directors) and one or more investors who participate as limited partner(s). The ILP is not incorporated and is not a separate legal entity. An ILP does not therefore have power to enter contracts in its own name. The general partner usually enters into contracts for the account of the ILP. As with the ICAV, a depositary is required to safe-keep the assets of the ILP. ILPs can be dedicated investment vehicles or offered on a private placement or public basis. There is no limit on the number of limited partners permitted for an ILP. The general partners of an ILP are responsible for the management of its business and are liable for the debts and obligations of the ILP. In general, a limited partner's liability will not exceed the amount of its capital contribution or commitment to the ILP.

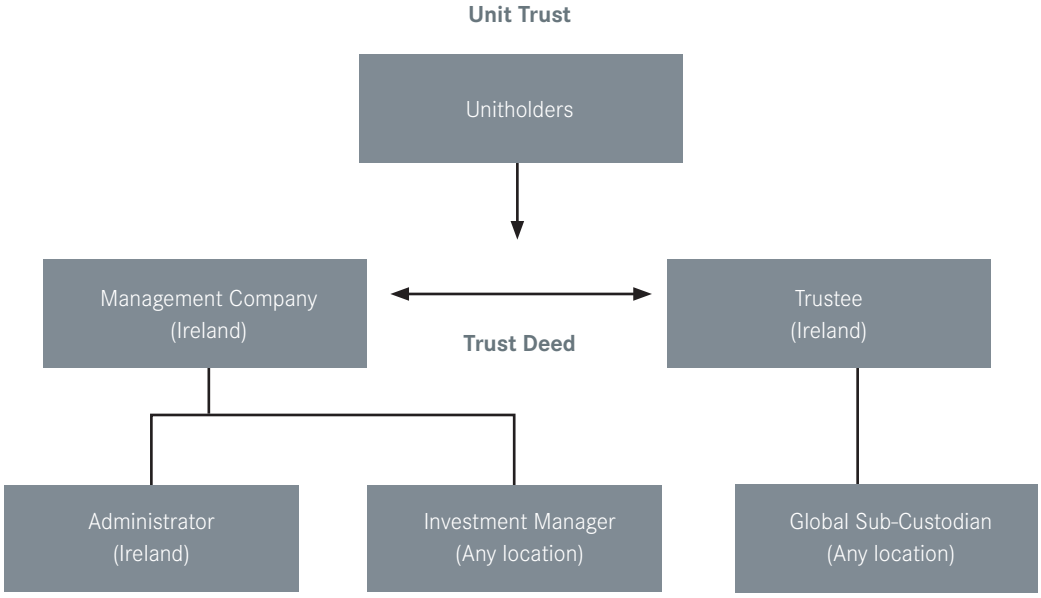


A typical ILP structure is illustrated below.

Unit Trust

A unit trust is created by a trust deed entered into by the trustee and the manager of the fund and the use of a management company in this structure is a necessity. It is a contractual arrangement and is not a separate legal entity, with the result that a unit trust does not have power to enter into contracts in its own name. In general, the manager or trustee enters into contracts for the account of a unit trust. The trustee is registered as the legal owner of the assets on behalf of the investors, who receive units, each of which represents a beneficial interest in the assets of the unit trust.

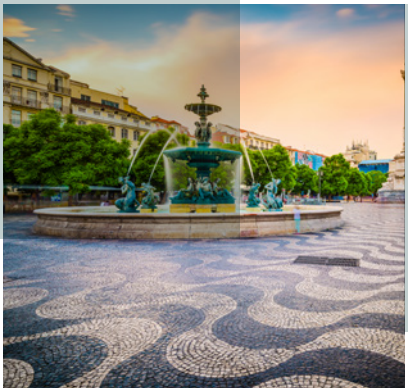
A typical unit trust structure is illustrated below.



Private Equity QIAIFs

Whether established as an ICAV, ILP or a unit trust, a private equity QIAIF:

- may provide for carried interest and waterfall mechanisms;
- may have broad and flexible investment policies and, in addition to an investment manager, may utilise non-discretionary investment advisers and investment committees;
- is not subject to any borrowing or leverage limits;
- may provide for partly paid shares and capital commitment and drawdown provisions;
- may be open-ended, have limited liquidity or indeed be closed-ended, with an initial closed-ended period of up to 15 years (after which, subject to investor approval, the closed-ended period may be extended);
- must appoint an investment manager which is a regulated entity approved by the Central Bank to act as an investment manager to Irish collective investment schemes;
- may provide for investment through wholly-owned subsidiaries; and
- may include flexible valuation provisions, including the utilisation of Irish Venture Capital Association and European Venture Capital Association rules.



2 Alternative Investment Fund Managers Directive and other Regulatory Developments Impacting Private Equity Funds

2.1 Introduction

The AIFMD became applicable across the EU on 22 July 2013 and imposes harmonised conditions and requirements on the structure and operation of the managers of alternative investment funds, including private equity funds. In return, these managers (each an "**AIFM**"), where they are EU managers, are entitled to avail of a passport to market alternative investment funds ("**AIF**") domiciled in the EU to professional investors across the EU. The AIFMD regulates AIFMs and does not regulate the AIF directly. In the private equity context, it is likely that the general partner of an Irish ILP and the management company of a unit trust will be the AIFM and therefore subject to AIFMD. Where it is decided to structure the fund as an ICAV, the ICAV may be the AIFM itself (a self-managed AIF) or an external AIFM may be appointed.

Non-EU AIFMs and non-EU private equity funds will not be entitled to the AIFMD marketing passport until the European Securities and Markets Authority ("**ESMA**") issues a positive opinion on the extension of the passport to non-EU jurisdictions.

2.2 Are all AIFMs in Scope?

An AIFM may be subject to AIFMD in one of two ways, either fully (as an "authorised" AIFM) or partially (as a "registered" AIFM). An authorised AIFM must comply in full with AIFMD but also enjoys the benefit of the marketing passport. A registered AIFM, on the other hand, only complies with a limited number of the AIFMD requirements, but does not enjoy the benefits of the marketing passport. An AIFM is subject to AIFMD in its entirety (and so must become an authorised AIFM) where it manages either:

- assets of €100 million or more; or
- assets of €500 million or more, where there is no leverage and a five year lock-in period for investors.

Below those thresholds, an AIFM may be a registered AIFM or may opt-in to full compliance, thereby availing of a passport for its AIF.

2.3 Main Provisions of AIFMD

AIFMD imposes several conditions and requirements on AIFMs and, indirectly, the private equity AIFs which they manage. The main conditions are summarised below.

Depositary Provisions

An AIFM must appoint a single depositary in respect of each AIF it manages. Depositaries will be liable for loss of financial instruments which are subject to the custody obligation unless the loss is due to an external event beyond the reasonable control of the depositary, the consequence of which would have been unavoidable despite reasonable efforts.

Leverage

The AIFM must set a maximum level of leverage for each AIF it manages. The AIFM must comply with this maximum at all times and must be able to demonstrate to the Central Bank that the levels set are reasonable.

Minimum Capital Requirements

An AIFM which is internally managed must have an initial capital of at least €300,000 and AIFMs which are external to the AIF they manage are required to have at least €125,000 in capital, increasing on a sliding scale to a maximum of €10 million according to the total value of assets under management. AIFMs must also have additional own funds which are appropriate to cover potential liability risks arising from professional negligence or hold professional indemnity insurance against liability arising from professional negligence.

Valuation

The AIFM itself or an external valuation agent appointed by it must calculate the value of the AIF's assets. The valuation process must be functionally independent from the portfolio management and measures must be put in place to mitigate conflicts of interest. In addition, where an external valuer is appointed (and in this context, the investment adviser or investment manager would be considered an external valuer), the AIFM must be able to demonstrate that the delegation is to an external valuer that is professionally recognised, can furnish professional guarantees and has been appointed pursuant to the AIFMD delegation provisions.

Delegation

The majority of AIFMs will delegate certain functions, including, in particular, portfolio management. The AIFM must be able to objectively justify the entire delegation structure to the Central Bank and will have to review the services provided by each delegate on an ongoing basis. It may only delegate its portfolio and / or risk management functions to regulated entities; where this condition cannot be satisfied, delegation is subject to the prior authorisation of the Central Bank.

The AIFMD provides that an AIFM may not delegate to the extent that it is no longer regarded as the manager of the AIF and is merely a "letter-box entity". The conditions under which an AIFM may delegate its functions and the criteria for determining whether an AIFM ought to be deemed a letter-box entity are elaborated upon in the AIFMD implementing regulations.

Remuneration Policies and Practice

An AIFM must have remuneration policies and practices that are consistent with and promote sound and effective risk management and do not encourage excessive risk taking. AIFMD establishes a set of rules (largely based on those contained in amendments to the Capital Requirements Directive) with which AIFMs have to comply when applying the remuneration policies for certain categories of staff. Clarifications from ESMA indicate that these policies must also be applied to certain staff of delegates (which would include, for example, the investment adviser or manager) in certain circumstances.

2.4 AIFMD Provisions of Particular Relevance in the Private Equity Context

AIFMD sets out additional measures in respect of AIFM managing private equity funds and these are summarised below. These measures will not apply in relation to the acquisition of companies having their registered office outside of the EU.

Asset Stripping Restrictions

Where an AIF acquires control of an EU company, certain asset stripping restrictions apply. Control is defined as 50% of the voting rights of a non-listed company and, in the context of listed companies, is defined by reference to the EU's Takeover Bids Directive (in which case the level is typically 30%). The basic restriction is that in the first two years after the AIF acquires control, the AIFM must use its best efforts to prevent the "controlled" company effecting distributions, capital reductions, share redemptions and / or the acquisition of own shares. However, there are a number of exemptions. Firstly, only distributions, capital reductions etc that would reduce the company's net assets by an amount in excess of its distributable profits and reserves are covered. Secondly, the restriction does not apply to any small or medium sized enterprises (ie, SMEs as defined under EU law) or special purpose vehicles ("SPVs") which hold real estate.

This prevents asset stripping in the traditional sense, however, the prohibition does not prevent payments to the AIF by way of a repayment of a loan and so it should still be possible to take money out of a business through the repayment of shareholder debt.

Notification of Acquisition of Significant Interests

An AIFM acquiring significant or controlling influences in non-listed EU companies must notify the Central Bank when the proportion of voting rights in a non-listed company held by an AIF reaches, exceeds or falls below the thresholds of 10, 20, 30, 50 or 75%. That notification must contain information regarding the voting rights held and the conditions under which control has been reached (including information about the identity of the different shareholders involved and the structures through which voting rights are effectively held).

Notification of Acquisition of Control

Where an AIF acquires control of a non-listed EU company, the AIFM is required to provide certain information to the unlisted company, its shareholders and the Central Bank within ten working days of acquiring control. This information includes the information discussed above in the context of acquisition of significant interests, namely information regarding the voting rights held and the conditions under which control has been reached. In its notification to the unlisted company, the AIFM must request the board of directors of that company to inform the employee representatives (or where there are none, the employees) of the acquisition of control and the above-mentioned information. The AIFM must use its best efforts to ensure the directors do so.

In addition, however, the AIFM must, where an AIF acquires control of an EU company (whether listed or unlisted), provide additional information (again, to the company, its shareholders and the Central Bank), including the identity of the AIFM which manages the AIF(s) that have control; the policy for preventing and managing conflicts; and its policy on external and internal communication relating to the company, in particular as regards employees. Furthermore, in the context of unlisted companies, the AIFM must also provide to the company and its shareholders (but not the Central Bank) information regarding its intentions with regard to the future business of the unlisted company and the likely repercussions on employment (including material changes to employment conditions).

Where the notification requirements only apply to acquisitions of control over non-listed companies, the Transparency Directive and other legislative provisions will continue to apply to the AIFM (and any other investor in the company) in the context of listed companies.

Implications for the Content of Annual Reports

Where unlisted companies are controlled by AIFs managed by an AIFM, the AIFM is required to request and use its best efforts to make sure that either: (i) the annual report of the unlisted company includes certain additional information and that the board of the company provides it to employee representatives (or where there are none, the employees); or (ii) the annual report of the AIF contains the additional information. The additional information to be included in annual reports must include:

- a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report;
- any important events that have occurred since the end of the financial year;
- the company's likely future development; and
- certain information on acquisitions of own shares.

2.5 AIFMD Summary

While AIFMD clearly poses challenges in terms of the requirements to which private equity funds are subject, it is important to note that AIFMD also presents opportunities for private equity funds in terms of asset raising given the European passport which flows from compliance with AIFMD. In addition, as the demand increases for enhanced transparency and regulated investment products, AIFMD is developing into an international brand or quality mark recognised and sought out by investors.

2.6 Other Regulatory Developments Impacting on Private Equity Funds

EuVECA and EuSEF Regulations

The European Venture Capital Fund ("**EuVECA**") Regulation and the European Social Entrepreneurship Fund ("**EuSEF**") Regulation (collectively, the "**Regulations**") came into effect on 22 July 2013 to coincide with the deadline for implementation of the AIFMD.

The Regulations introduce a new regime for venture capital and social entrepreneurship funds fulfilling certain conditions to use an EU brand of EuVECA or EuSEF. Significantly, AIFMs who are below the AIFMD thresholds, can market funds with EuVECA or EuSEF status pursuant to an EU-wide passport, without opting into full compliance with the AIFMD.

Data from the European Commission shows that 98% of European venture capital fund managers have a portfolio of funds with assets under management below €500 million, while the average social entrepreneurship fund has assets under management below €20 million. The EuVECA and EuSEF Regulations provide a uniform set of rules for the operation of venture capital funds and social entrepreneurship funds across Europe in return for which the managers of such funds may avail of an EU marketing passport similar to that provided for in the UCITS and AIFMD legislation, with less burdensome requirements than apply under UCITS and AIFMD legislation.

The Regulations apply to sub-threshold AIFMs that meet all of the following conditions:

- they are established in the EU;
- they are subject to registration in their home member state in accordance with the AIFMD; and
- they manage portfolios of qualifying investments as defined in the Regulations.

Qualifying EuVECA or EuSEF can be externally or self-managed. The new regimes are voluntary, which means that an AIFM may choose not to avail of the Regulations.

The EuVECA Regulation and the EuSEF Regulation provide an alternative for small fund managers managing venture capital and social investment funds who do not intend to opt into the AIFMD but who wish to market using a pan-European marketing passport.

Amendments to the Regulations introduced in 2017 designed to increase the uptake of these two new fund types provide, amongst other matters, that AIFMs which are authorised under the AIFMD (ie, above-threshold AIFMs) are entitled to use the "EuVECA" and "EuSEF" designations when marketing such funds in the EU.

European Long–Term Investment Funds

A new investment fund framework was established in December 2015 to promote investment in long-term assets and companies including infrastructure, transport and sustainable energy projects. European Long Term Investment Funds ("**ELTIFs**") are available to all types of investor across Europe (and not just professional investors, as is the case under AIFMD). As well as complying with the ELTIF Regulation, any ELTIF manager would also have to be authorised under AIFMD and comply in full with the AIFMD requirements to provide adequate protection for its investors. Under the regulation, investors will not be able to redeem until the specified end date of their investment (this could be a date ten years or more after the money is invested).

Summary

The above regulatory developments, alongside AIFMD, illustrate the increasing regulation to which private equity funds are subject but also offer opportunities to managers of private equity funds to increase the asset-raising capabilities of such funds.

3 The Authorisation Process for a Private Equity QIAIF

There are a number of steps and requirements to establish and bring the QIAIF product to market and a summary of these steps is set out below.

3.1 Speed to Market - Authorisation in a Day

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

Under the QIAIF fast-track procedure, the Central Bank does not engage in a detailed prior review of any of the key fund documents. Instead of undertaking a detailed review, the Central Bank relies on confirmations provided by the directors / manager and legal advisers of the QIAIF to ensure compliance with applicable Irish regulations. Compliance by the key fund documents is also demonstrated by the completion of application forms that must be submitted with each new fund application.

3.2 Approval of AIFM

As noted herein, a private equity fund established as a QIAIF will, pursuant to the AIFMD, be required to appoint an external AIFM or, in the case of a private equity fund established as an ICAV, such fund may be a self-managed AIF. The AIFM will need to be approved by the Central Bank in advance of the QIAIF application for authorisation.

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

An application for authorisation as an AIFM must be made by submitting:

(a) a completed application form signed by two directors of the applicant AIFM;

(b) in the case of externally managed AIFMs, completed individual questionnaires ("**IQ**") in respect of:

- each director and senior manager; and
- each individual who has a direct or indirect holding of shares or other interest in the proposed AIFM, which represents 10% or more of the capital or voting rights in the AIFM, and any other individual who is in a position to exercise a significant influence over the management of the AIFM;

(c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under AIFMD;

(d) information on the remuneration policies and practices of the AIFM;

(e) information on arrangements made for the delegation and sub-delegation to third parties; and

(g) a statement of responsibility.

3.3 General Information Required for QIAIFs

Availing of the fast-track process referred to above, an application for authorisation of a QIAIF must include the prospectus, a statement of the general nature of the investment objectives of the QIAIF and the identity of the proposed AIFM and its details and also the identity of any proposed management company or general partner (where these entities are not the AIFM). In addition, the identity of the depositary, the investment manager and any third party which will be contracted by the QIAIF, or management company acting for the QIAIF, is required, and copies of the relevant material contracts must also be included in the application.

Where the QIAIF is being established as an ICAV, applications must contain the instrument of incorporation, the names of the directors and the company secretary and a copy of the agreement between the ICAV and the depositary.

Where the QIAIF is being established as an ILP, applications require the partnership agreement, the address of the registered office, the principal place of business of the ILP and the term, if any, for which the ILP is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement. In addition, the application requires details of the person or persons proposed under the partnership agreement as general partner and, if the general partner is not an Irish entity, certain details regarding the general partner (eg, a copy of its constitutional document, a list of its directors and details of a service agent based in Ireland).

Where the QIAIF is being established as a unit trust, applications must contain the trust deed between the management company and the depositary.

3.4 Fund Directors

Proposed directors of the ICAV, the general partner or the management company must also be approved in advance. Irish funds must have at least two Irish resident directors.

Directors, whether previously approved or not, are required to complete an IQ online on a Central Bank website dedicated to each structure. Each time a director is to be appointed, the IQ on the website dedicated to the appointing structure must be completed by the new director, regardless of whether or not the director has previously completed an IQ or not.

The Central Bank fitness and probity standards require that a fund director must:

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

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

4 Taxation of Irish Domiciled Private Equity Funds

4.1 Taxation of Private Equity Funds

The tax treatment of Irish regulated private equity funds depends on whether the fund is established as either an ICAV or a unit trust, on the one hand, or an ILP, on the other. However, regardless of the type of fund established, Irish funds are exempt from Irish tax on income and gains derived from their investment portfolios and are not subject to any Irish tax on their net asset value. Recent legislation has been introduced in respect of the taxation of certain investors in QIAIFs investing in Irish real estate and further information can be provided in relation to this.

4.2 Taxation of ICAVs and Unit Trusts

Taxation of Fund

ICAVs and unit trusts are exempt from Irish tax on income and gains derived from their investment portfolios and are not subject to tax on their net asset value.

Taxation of Investors

Investors who are not Irish tax resident may receive distributions without the deduction of any Irish withholding tax. Similarly, non-Irish investors may redeem or transfer units in Irish private equity funds without the imposition of any Irish tax. Declarations are normally obtained from investors confirming their non-Irish status. These declarations can be incorporated in the fund's standard subscription form. However, where funds are not marketed to Irish investors and certain measures are put in place, investor declarations are not required.

Irish withholding tax is generally deducted from distributions to Irish tax resident investors and on disposals and redemptions of units by Irish tax resident investors. The rate of withholding tax is currently 25% or 41% (depending on the type of payment). However, exemptions from this withholding tax are available for certain categories of Irish investors, such as pension funds, life assurance companies and other Irish domiciled funds.

Treaty Access

From an Irish perspective, Irish domiciled funds established as ICAVs or unit trusts are generally entitled to the benefits of Ireland's extensive and expanding tax treaty network. Such funds may obtain certificates of Irish tax residence from the Irish tax authorities. However, the availability of treaty benefits in any particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country.

4.3 Taxation of ILPs

Taxation of Fund and Investors

ILPs are not subject to Irish tax on income or gains derived from their investments or on their net asset value. Furthermore, there is no withholding tax on distributions from Irish ILPs.

For Irish tax purposes, an ILP is 'tax transparent'. This means that the income and gains accruing to it are treated as accruing to its unitholders in proportion to the value of the units beneficially owned by them as if such income and gains did not pass through the hands of the investment limited partnership. Due to their tax transparent nature, ILPs are not required to obtain declarations from non-Irish tax resident investors.

Treaty Access

Because ILPs are tax transparent under Irish law, they do not benefit from the Irish tax treaty network. As a result, the relevant tax treaty is likely to be between the source country (where the investment is located) and the unitholder's country.

4.4 VAT and Transfer Taxes

The provision of management and administration services to Irish funds is exempt from Irish VAT. However, other services (such as custody, legal and accounting services) can result in an Irish VAT liability for Irish funds, which may not always be recoverable.

No Irish transfer taxes apply to the transfer, exchange or redemption of units in Irish domiciled funds. No capital duty is payable on the issue of fund units.

5 Advantages of Ireland as a Funds Domicile

Ireland is internationally recognised as a leading fund domicile of choice because:

- Ireland has a pragmatic regulatory environment governed by an approachable Central Bank which is sensitive to the needs of international fund managers and service providers and is willing to discuss and, where possible, work through any issues.
- Ireland is a member state of the EU, an OECD member state, a member of the Economic and Monetary Union and was the only international funds centre to appear on the original OECD white list of countries that are in compliance with internationally agreed tax standards. Following the June 2016 vote in the United Kingdom to withdraw from the EU, Ireland has reaffirmed its commitment to its membership of the EU and retains its important position as an English speaking gateway to one of the wold's largest markets.
- Ireland has a range of fund vehicles which can be tailored to suit investor requirements and which can be used to access our continuously expanding tax treaty network (which at present includes over 70 countries).
- Ireland has unrivalled speed to market: the vast majority of alternative investment funds can avail of the Central Bank's 24 hour authorisation process.
- Ireland provides the most favourable and effective tax environment for investment funds: unlike other jurisdictions, no fund tax is payable, no Irish taxes are imposed on income or gains made by non-Irish resident / ordinarily resident investors, no stamp duty is levied on fund units and there is no annual subscription tax for funds.
- Euronext Dublin (formerly the Irish Stock Exchange) is widely regarded as one of the leading exchanges in the world for the listing of investment funds.
- Having been the first regulated jurisdiction to provide a regulatory framework specifically for the alternative investment fund industry, Ireland is at the forefront of product innovation, providing opportunities and solutions for this sector.

Ireland's position as a leading funds domicile is demonstrated by the fact that:

- 71% of global investment managers surveyed chose Ireland as a top 3 European domicile – more than 25% more than its closest rivals (Economist Intelligence Unit Survey on Choosing a European Fund Domicile 2014)
- 986 fund promoters from over 50 countries use Ireland to distribute UCITS and other funds to over 90 countries across the globe.
- Ireland is home to more than 58% of European ETF assets.
- 40% of the world's alternative investments fund assets are administered in Ireland.
- Ireland has the largest number of stock exchange listed investment funds in the world.
- Ireland provides unrivalled experience and expertise and Irish service providers are recognised for their professionalism, responsiveness and flexibility.
- Ireland does not have any domestic legislation which requires the publication in local newspapers or similar publications of all notices to investors. Publication requirements in other jurisdictions can cost as much as €6,000 on each occasion that it is required and, as many host jurisdictions in Europe require a fund to follow the same publication requirements as they are subject to in their home jurisdiction, this cost can be multiplied many times over in jurisdictions which impose such publication requirements.
- As Ireland is in the same time zone as London, business can be conducted with Asia and the Pacific in the morning and the Americas in the afternoon. Ireland is the only English-speaking country in the euro zone.

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