

## How to set up in Ireland

### Alternative Investment Fund Manager (AIFM)

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in Ireland.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

#### What are the pros?

- Very experienced regulator
- A constructive and open approach to fund/manager regulation
- No bonus cap for AIFMs

#### What are the cons?

- Critical/significant outsourcings will require CBI pre-approval



## Alternative Investment Fund Manager

### Licence/Passport Process

- Information on the application process is available here: [AIFM Application Guidance](#)
- CBI application forms are detailed but reasonably user-friendly
- Some additional supporting documents required, including a programme of activities and other materials (information on the AIFs the AIFM intends to manage, details of minimum capital, financial projections, ownership and organisational structure, individual questionnaires for persons performing pre-approval controlled functions, etc.)
- No application fee
- Timetable is currently around 4-6 months (including preparation time)
- Very experienced regulator – there are approximately 150 authorised AIFMs and 2,340 AIFs holding almost €500 billion in assets
- This includes a large number of US manager-sponsored AIFs. It is considered a friendly domicile for US managers
- The CBI has a constructive and open approach to fund/manager regulation.

### Conduct of business Prudential rules

- Consistent with the AIFMD baseline
- Ireland permits an authorised AIFM to be authorised to provide “top-up” services such as portfolio management, investment advice, safekeeping, reception and transmission of orders
- An Irish AIFM cannot provide services, except fund management and these top-up services.

### Corporate governance

- In addition to the AIFMD baseline, the CBI has a “fitness and probity” regime which applies to certain controlled functions, with persons in “pre-approval controlled functions” (eg directors, designated persons (see below), CEO, CFO, CRO, head of compliance, etc.) requiring CBI approval before role can be commenced
- In addition to the AIFMD baseline, the CBI requires all “qualifying shareholders” (ie any individual who has a direct or indirect holding, which represents 10% or more of the capital or voting rights in the AIFM or other individual who is in a position to exercise a significant influence over the management of the AIFM) to complete an individual questionnaire
- In addition to the AIFMD baseline, the CBI imposes additional threshold conditions around:
  - (i) the experience of the AIFM’s directors and managers in relation to the type of AIFs to be managed; and
  - (ii) the group structure not preventing effective supervision by the CBI
- The CBI also requires that the AIFM appoint “designated persons” responsible for the day-to-day management and control of the following functions of the AIFM: regulatory compliance; fund risk management; operational risk management; investment management; capital and financial management; and distribution
- Designated persons who are not also directors must be Irish resident. The CBI is currently consulting on a relaxation of this rule to allow non-Irish residents to perform these functions
- The CBI requires that the AIFM has a minimum of two directors that are Irish residents.

### Regulatory environment

- CBI is relatively open to discussion on key issues – regulatory approach is “risk based”, such that the most intensive/intrusive regulation is focused on high-risk firms
- Depending on the risk-rating of the firm, it may not have a dedicated point of contact at the CBI
- Ongoing fees – Industry funding levy per annum will depend on CBI risk rating (Low: €6,606, Medium Low: €51,450 and Medium High: €258,809). Most AIFMs have been assigned a “low” rating by the CBI.

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### Tax

- 12.5% corporate tax rate on Irish trading income and dividends from trading subsidiaries in EU and treaty countries
- No Irish tax for non-residents using the services of an Irish resident investment manager
- Broad domestic dividend withholding tax exemptions, so tax free repatriation to US, UK and a wide range of other jurisdictions is available
- Limited transfer pricing code based entirely on the OECD arm's length principles, applies to trading activities only and transactions which have the effect of reducing Irish tax take. Given comparatively low corporation tax rate in Ireland, TP issues are likely to be in other jurisdictions
- The current marginal rates of income tax, Class A PRSI and USC for employees, which are subject to change, are 40%, 4% (employee PRSI), 10.75% (employer PRSI) and 8%, respectively (so the overall rate of tax for employees is 52%)
- Temporary assignees to Ireland may benefit from relief from Irish income tax subject to certain conditions
- Ireland also operates a Special Assignee Relief Programme ("SARP"). Qualifying individuals may apply to have 30% of income in excess of €75,000 exempted from Irish income tax. To qualify for SARP, the individual must be assigned to work in Ireland for at least one year (among other conditions)
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

### Employment law

- Remuneration rules are consistent with the AIFMD baseline but with flexibility to disapply payout process rules on proportionality grounds
- No bonus cap for AIFMs
- Employment law is broadly similar to UK
- Notice – the greater of statutory (max 8 weeks based on service) or contractual
- Unfair dismissals risk – there must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the process used must be fair. If an employee is unfairly dismissed he/she may seek compensation, reinstatement or reengagement. The maximum award of compensation is two years' total remuneration package
- Redundancy – two weeks' pay per year of service plus a bonus week. A week's pay is capped at €600. An employee must have two years' service before a redundancy payment becomes payable.

### Data protection

- Legislation is based on EU directives and regime is very similar to the UK in terms of practical application.

### Outsourcing

- Many Irish financial institutions have outsourcing arrangements
- Critical/significant outsourcings will require CBI pre-approval (CBI is now more challenging on outsourcing arrangements than it has been historically)
- Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing.

### Corporate

- Typically, an Irish private company limited by shares (LTD) or designated activity company (DAC)
- Incorporation within five working days of receipt of completed online application (€50) and within 15 working days of receipt of completed hard-copy application (€100).

## Key contacts



**Charlotte Stalin**  
Partner  
London  
T +44 20 7825 4180  
E charlotte.stalin  
@simmons-simmons.com



**Fionán Breathnach**  
Partner  
Ireland  
T +3531 266 2111  
E fionan.breathnach  
@simmons-simmons.com



**Ian Rogers**  
Partner  
France  
T +331 53 29 16 22  
E ian.rogers  
@simmons-simmons.com



**Romeo Battigaglia**  
Partner  
Italy  
T +3902 72505 471  
E romeo.battigaglia  
@simmons-simmons.com



**María Tomillo**  
Managing Associate  
Spain  
T +3491 426 2583  
E maria.tomillo  
@simmons-simmons.com



**Harald Glander**  
Partner  
Germany  
T +49 69 907454 44  
E harald.glander  
@simmons-simmons.com



**Louis-Maël Cogis**  
Partner  
Luxembourg  
T +352 26 21 16 14  
E louis-mael.cogis  
@simmons-simmons.com



**Rezah Stegeman**  
Partner  
The Netherlands  
T +3120 722 2333  
E rezah.stegeman  
@simmons-simmons.com

[simmons-simmons.com](http://simmons-simmons.com)  
[elexica.com](http://elexica.com)  
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