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Irish Qualifying Investor Alternative Investment Funds

An overview

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1. Introduction

This brochure provides an overview of the regulatory and tax environment for qualifying investor alternative investment funds ("QIAIFs") and their service providers in Ireland.

1.1 Background

In 1987 the Irish government established the International Financial Services Centre ("IFSC") in Dublin. The IFSC has become one of the leading global international financial services centres. Many international financial institutions now have operations based both in the IFSC and elsewhere in Ireland.

The Irish government recognised the importance of the collective investment schemes ("Funds") industry within the financial services sector and was one of the first EU administrations to transpose the first UCITS Directive into Irish national law. It quickly followed up with legislation to provide for non-UCITS type Funds and amended the Irish taxation legislation to provide that Funds would not be liable to Irish tax.

In recent years, the Alternative Investment Fund Managers Directive ("AIFMD") has also been transposed into Irish law. AIFMD regulates the managers ("AIFMs") of alternative investment funds ("AIFs") which, in essence, are all Funds which are not UCITS.

1.2 AIFMD

AIFMD enables AIFs authorised in one EU member state to be sold to professional investors across the EU under a marketing passport. Certain EU member states might also permit such AIFs to be sold to other categories of investors.

1.3 Regulatory Authority – the Central Bank of Ireland

The Central Bank of Ireland ("Central Bank") is the sole regulatory authority in the Irish financial system. It regulates banks, building societies, providers of investment services as well as Euronext Dublin and futures and options exchanges.

The Central Bank is the competent authority in Ireland for the purposes of the regulation of QIAIFs and the supervisory authority for the authorisation and regulation of fund service providers including AIFMs, other investment managers, administrators and depositaries.

The Central Bank has taken a balanced, pragmatic and dynamic approach to its regulatory duties which has enabled a full range of Irish Fund products to be developed and offered.

Ireland is now recognised as one of the leading jurisdictions in which to establish and administer regulated Funds.

2. QIAIFs

2.1 Overview

The QIAIF is the regulatory approval of choice for Fund promoters targeting `sophisticated' investors and is not currently bound by the regulatory limits relating to investment strategies or leverage.

2.2 One-day authorisation process

The Central Bank does not review QIAIF documentation and will issue confirmation of authorisation within 24 hours of receiving a complete QIAIF authorisation application.

A QIAIF authorisation application must include fully completed Central Bank application forms, dated offering documents, certified copies of the constitutive documents and signed and dated material contracts (i.e. depositary agreement, administration agreement, AIFM agreement, prime brokerage agreement, investment management agreement (if there is a separate investment manager to the AIFM) and distribution agreement).

A certification as to the accuracy and completeness of the contents of the Central Bank application form is required, as well as confirmation that the documentation complies with Central Bank requirements, as well as certain ancillary documents depending on the legal structure utilised.

The Central Bank encourages applicants to discuss novel or innovative proposals in advance of making formal applications so as to ensure that authorisations are not delayed.

Service providers, including the AIFM, investment manager, administrator and depositary, as well as the directors must be approved or deemed acceptable by the Central Bank before the application for authorisation can be made.

The Central Bank approves additional sub-funds of umbrella QIAIFs within 24 hours, as well as other relevant updates to QIAIF documentation, including offering documents.

2.3 Minimum initial subscription

A QIAIF has a minimum initial subscription of €100,000 (or its equivalent in another currency). The minimum initial subscription may be spread among various sub-funds of an umbrella QIAIF. Institutions are not permitted to aggregate amounts of less than €100,000 for individual investors.

2.4 Investor eligibility

A QIAIF may only accept investment from a "Qualifying Investor", which is any of the following:

- an investor who is a professional client under MiFID; or
- an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF; or
- an investor who certifies that they are an informed investor by providing the following:
  - confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
  - confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of assets of the same kind as the assets of the QIAIF.

There are certain derogations from these requirements for investors who are connected with the QIAIF such as the investment manager and its employees involved in the management of the QIAIF.

3. Fund structures

A QIAIF can be established as:

- an Irish Collective Asset-management Vehicle ("ICAV");
- an investment company with variable share capital;
- a unit trust;
- a common contractual fund; or
- an investment limited partnership.

3.1 Irish Collective Asset-management Vehicle (ICAV)

The ICAV is the default fund structure in Ireland.

The ICAV is designed solely for use as a Fund and as a result is not required to comply with Irish or EU general company law, much of which is not appropriate and/or administratively burdensome for a Fund.

In addition to its role with regards to the authorisation of QIAIFs, the Central Bank is also the competent authority for the incorporation of an ICAV.

Importantly, an ICAV is able to "check-the-box" to be treated as a partnership for US tax purposes. As a result, master-feeder ICAV structures are very attractive to managers seeking to raise capital from US investors.

3.2 Investment Companies

A QIAIF may be established as a public limited company with variable capital.

Prior to the introduction of the ICAV structure, the variable capital company was the most common vehicle chosen for QIAIFs but is now rarely used.

3.3 Unit Trusts

A QIAIF may be established as a unit trust, which is a historically popular structure for Asian investors, in particular Japan and South Korea.

A unit trust does not have separate legal personality and is created pursuant to a trust deed entered into between the depositary and the AIFM.

The AIFM enters into contracts on behalf of the unit trust. Investors in a unit trust are referred to as unitholders.

The depositary is the legal owner of assets of the unit trust but holds such assets as trustee on trust for the benefit of the unitholders.

The liability of unitholders is limited under the trust deed to the amount contributed or agreed to be contributed for units.

3.4 Common Contractual Funds (CCF)

Many multi-national pension schemes seek to achieve economies of scale and efficiency of operation by pooling pension fund assets into one entity.

For such pooling to successfully take place, it is imperative that the pooling vehicle is tax transparent (ie that the income and gains of such vehicle are treated as arising or occurring to the unitholders or investors and not to the vehicle itself) in order to ensure that the tax status of the pension schemes is not prejudiced, and that the efficiencies of a pooling vehicle are not negated by detrimental tax treatment. CCFs are, under Irish law, tax transparent vehicles which may be established for such purpose.

CCFs are pooling vehicles established under the law of contract namely by a deed of constitution to which an AIFM and depositary will be party. A CCF does not have separate legal personality. Investors are described as unitholders and hold co-ownership rights in the property and assets of the CCF represented by units.

The liability of unitholders is limited under the deed of constitution to the amount contributed or agreed to be contributed for units.

The deed of constitution may be drafted to provide that income is distributed on an annual basis so as not to prejudice the tax transparency of the vehicle in certain jurisdictions.

The depositary is a party to the deed of constitution, but the depositary does not act as a trustee of a CCF. The assets of the CCF are held by the Depositary pursuant to a separate depositary agreement.

3.5 Investment Limited Partnerships (ILP)

A QIAIF may be established as an investment limited partnership, which is a common law limited partnership. Common law limited partnerships are the default legal structure for closed-ended Funds, such as those investing in private equity or other illiquid investments.

As a tax transparent vehicle, the ILP has many uses and is particularly suitable as an investment vehicle for investment in US securities with US advisers or as a feeder fund for US taxable persons.

An ILP is created by a limited partnership agreement entered into by one or more general partner(s) and any number of limited partners. The general partner will be an entity controlled by the promoter of the ILP and has unlimited liability for the debts of the ILP. The investors are limited partners which means that the liability of the investors is limited to the amount agreed to be contributed by each investor to the ILP, subject to such limited partner not being involved in the management of the ILP.

In an ILP, all of the assets and liabilities belong jointly to the partners in the proportions agreed in the limited partnership agreement. Similarly, the profits are directly owned by the partners.

The ILP is a tax-transparent entity and the income and gains accruing to an ILP are treated as accruing to each investor in proportion to interests in the ILP held by each such investor. If the ILP invests in Irish assets, certain Irish tax consequences may arise for the ILP or its investors.

Although interest in the ILP structure has grown considerably (prompted by the new possibility of migrating offshore limited partnerships to Ireland under recently enacted redomiciliation legislation), there are only a few ILPs currently in existence. However, we anticipate further interest in the product following substantive legislative amendment in the short term

3.6 Standalone or Umbrella Fund

A QIAIF may be established as a standalone Fund or an umbrella Fund with any number of sub-funds. Each sub-fund of an umbrella is treated as a separate collective investment scheme with a separate pool of assets and may pursue different investment objectives and policies. The assets and liabilities of each sub-fund are legally segregated from those of each other sub-fund and the umbrella Fund itself.

Standalone Funds and sub-funds of umbrella Funds may establish different classes of ownership interests. Such classes do not represent a separate pool of assets but can have different functional currencies, charging structures and liquidity profiles.

3.7 Master-Feeders

The QIAIF ICAV master-feeder is a popular structure for managers seeking to raise capital from US taxable investors in addition to EU investors.

For a variety of tax and regulatory reasons it is not advisable to commingle US taxable investors and non-US taxable investors in the same Fund.

As such, the default structure for managers expecting to launch with US taxable investors consists of a QIAIF feeder ICAV (for EU, non-US and US tax-exempt investors), a limited partnership feeder for US taxable investors, usually established in Delaware, and a master QIAIF ICAV. Amaster QIAIF ICAV may elect to be treated as a partnership for US tax purposes and such election, along with the use of a limited partnership feeder, provides for the optimal tax treatment for US investors, both taxable and tax exempt.

For managers launching without investment from US taxable investors, it remains advisable to establish a master-feeder in order to “future-proof” the Fund structure. If a Delaware feeder is not required for US taxable investors from the outset, a “single-legged” master-feeder can be established which consists of a feeder QIAIF ICAV and a master QIAIF ICAV. Such a structure can provide the flexibility of “bolting on” a Delaware feeder in the future, preserving the optionality of future investment from US taxable investors without any impact on the existing investors or the existing Fund structure.

On the assumption that an authorised EU AIFM is appointed, a feeder QIAIF ICAV can be marketed to professional investors in the EU on a passported basis.

A feeder QIAIF ICAV may also feed into a non-Irish master fund subject to a general restriction on investment of more than 50% of net assets in any one unregulated investment fund.

An unregulated fund is any fund other than a fund which is authorised in Ireland or in another jurisdiction which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing QIAIFs. The Central Bank would consider a Cayman Islands Monetary Authority (CIMA) registered mutual fund to be unregulated for such purposes.

The Central Bank might consider a derogation to the 50% restriction outlined above upon receipt of a specific application where:

- The feeder QIAIF ICAV (or relevant sub-fund) has a minimum subscription of at least €500,000 or its equivalent in other currencies; and
- The offering documents for the feeder QIAIF ICAV contain detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the QIAIF and its AIFM but which do not apply to the unregulated master fund and its management company.

In accordance with AIFMD, if an EU feeder fund (including a feeder QIAIF ICAV) invests 85% or more of its assets into a non-EU master fund, that EU feeder fund cannot be marketed to professional investors in the EU on a passported basis, even where an authorised EU AIFM has been appointed.

3.8 Open-ended QIAIFs with Limited Liquidity

An open-ended QIAIF with limited liquidity is a QIAIF which:

- offers redemption and/or settlement facilities on a less than quarterly basis; or
- provides for a period of greater than 90 days between the dealing deadline and the payment of redemption proceeds.

A QIAIF which has the ability to establish side pocket share classes into which illiquid assets may be placed (upon purchase) must classify itself as open-ended with limited liquidity or as closed-ended.

3.9 Closed-ended QIAIFs

A closed-ended QIAIF is a QIAIF whose duration is finite. Such a QIAIF must state the closed-ended period in its constitutive or offering documents. The constitutive document must also set out the provisions for the end of the closed-ended period. The offering documents of a closed-ended QIAIF must make appropriate reference to the fact that the Fund will not redeem its units and to the availability or otherwise of other mechanisms through which investors can dispose of units during the closed period. It is possible for an umbrella QIAIF to establish sub-funds which are open-ended, open-ended with limited liquidity and closed-ended. In such circumstances, the requirements outlined above will only apply to the closed-ended sub-funds of the umbrella QIAIF.

4. Certain Features

4.1 Warehousing

An investment manager may acquire assets before a QIAIF is authorised on the basis that, when authorised, the QIAIF can then acquire the assets from the investment manager. This is known as warehousing. The Central Bank requires that proposals to acquire assets pursuant to a warehousing arrangement be fully disclosed in the offering documents, including details of any fee payable in relation to such arrangements. A QIAIF may acquire assets under a warehousing arrangement at market price or cost price (if lower than the current market value).

4.2 Share classes

Two fundamental principles which underpin the Central Bank's approach to the use of separate share classes within a single Fund or sub-fund are that:

- each Fund or sub-fund must consist of a single pool of assets;
- assets may not be allocated to individual share classes;
- the capital gains or losses and income arising from that pool of assets must be distributed and/or must accrue equally to each investor relative to their participation;
- investors in a share class must be treated equally; and
- where more than one share class exists, all the investors in the different share classes must be treated fairly.

It is possible to establish share classes that vary in relation to subscription /redemption procedures, distribution policies, charging structure, hedging policies and other criteria clearly disclosed in the offering documents and permitted by the constitutive documents.

A QIAIF may allocate assets (including financial derivative instruments) to individual share classes where the arrangement:

- is not made for the purpose of pursuing a separate investment objective by the share class;
- does not result in a share class operating de facto as a separate sub-fund; or
- is not created in order to circumvent the requirements set out above.

The constitutive document should provide for segregation of liability between respective share classes to the extent possible and where this is not possible, there should be prominent disclosure in the offering documents. Notwithstanding any such disclosure, statutory segregation of assets and liabilities between share classes (as distinct from sub-funds) is not available and cross-class liability will continue to apply between share classes in the same Fund or sub-fund.

4.3 Side pockets arrangements

A QIAIF may establish side pocket share classes for difficult to value or illiquid assets, provided that the constitutive documents allow it and subject to advance disclosure to investors.

An open-ended QIAIF may purchase assets and immediately place these in side-pockets as long as the Fund (or sub-fund) classifies itself as an open-ended Fund with limited liquidity.

4.4 Issuing debt

A QIAIF is permitted to raise finance through the private issue of notes. Loan originating QIAIFs are discussed below.

5. Launch Timing and Process

The Central Bank will issue confirmation of authorisation within 24 hours of receiving a complete QIAIF authorisation application.

The overall timeline for establishing a new QIAIF depends on a number of factors, including:

- whether the proposed AIFM, investment manager, other service providers and directors are already approved by the Central Bank;
- the complexity of the QIAIF; and
- response times from fund service providers and onboarding.

In practice the establishment of a QIAIF can take somewhere between 10 to 12 weeks.

The following is an outline of the main steps involved in the establishment of a QIAIF:

- Completion of new fund questionnaire;
- Confirmation of legal structure;
- Confirmation of service providers;
- Establish the chosen legal structure of the Fund;
- If required, prior approval of entities providing services is obtained from Central Bank (ie AIFM, investment manager, directors);
- Offering documents drafted by legal counsel and agreed between various stakeholders;
- Negotiation and finalisation of material contracts;
- All necessary Central Bank application forms and ancillary documents prepared by legal counsel;
- Launch board meeting;
- Legal counsel files complete QIAIF authorisation application with the Central Bank prior to 5pm on a business day;
- The Central Bank furnishes a letter confirming authorisation of the QIAIF and approval of the sub-fund(s)(if any) by close of business on the following business day; and
- Launch can take place the following business day although frequently there is a period of capital raising following authorisation and prior to actual launch of the QIAIF.

6. Service Providers and Directors

6.1 Depositary

A QIAIF is required to appoint an Irish depositary. The duties of the depositary include:

- Safekeeping the assets of the QIAIF;
- Ensuring that the sale, issue, repurchase, redemption and calculation of shares or units effected by or on behalf of a QIAIF are carried out in accordance with the law pursuant to which the QIAIF is authorised, the Central Bank's regulations and the QIAIF's constitutive and offering documents;
- Ensuring that the value of the QIAIF's shares/units is calculated in accordance with the QIAIF's constitutive and offering documents;
- Carrying out the instructions of the AIFM or the QIAIF unless they conflict with the law pursuant to which the QIAIF is authorised, the Central Bank's regulations or the constitutive or offering documents;
- Ensuring that in transactions involving the QIAIF's assets, any consideration is remitted to it within the time limits which are acceptable to market practice in the context of the particular transaction;
- Ensuring that the QIAIF's income is applied in accordance with the QIAIF's constitutive and offering documents; and
- Enquiring into the conduct of the AIFM or the QIAIF in each annual accounting period and report thereon to the QIAIF's investors.

6.2 Administrator

A QIAIF is required to appoint an Irish administrator. The duties of the administrator include:

- Calculating the net asset value and net asset value per share, including the updating/ confirmation of the prices of the underlying securities and the calculation of income and expenses accruals;
- Maintaining and updating all accounting records (ie records of income, expenses, assets and liabilities; semi-annual and annual accounts);
- Maintaining the unitholder/shareholder register; and
- Originating all correspondence and dividends/income distributions to unitholders/shareholders.

6.3 Investment manager

If there is a separate investment manager appointed in addition to the AIFM, or if a non-EU investment manager is intended as the AIFM, the proposed investment manager is required to be cleared in advance by the Central Bank to act as investment manager.

In respect of non-EU applicants, the Central Bank must be satisfied that the firm is appropriately regulated in its home state and subject to prudential regulation by its home competent authority. The applicant must complete an online application and submit information concerning the applicant's expertise, integrity and adequacy of financial resources.

The Central Bank operates a fast-track approval process (which is essentially a notification) for investment managers which are one of the following :

- UCITS management companies authorised under the UCITS Directive;
- Investment firms authorised under MiFID to provide portfolio management;
- Credit institutions authorised under Directive 2006/48/EC having the approval to provide portfolio management under MiFID; or
- AIFMs authorised under AIFMD.

6.4 AIFM

A QIAIF is required to appoint an AIFM.

The AIFM may be authorised by the Central Bank or another EU regulatory authority and passported into Ireland.

It is possible for a QIAIF to designate a non-EU investment manager as its AIFM but that non-EU investment manager is required to comply with certain of the requirements of AIFMD and the EU marketing passport would not be available. The proposed non-EU AIFM would need to receive clearance from the Central Bank in advance of its appointment by the QIAIF.

If the promoter does not operate its own AIFM, there are a number of third-party providers which will act as AIFM "for hire".

It is technically possible to establish an internally managed QIAIF (i.e. no separate AIFM) but this would require the QIAIF to itself obtain authorisation as an AIFM, which means that internally managed QIAIFs are very rare.

6.5 Directors

A minimum of two Irish resident directors is required.

It is expected that the chairperson will be non-executive, that at least one director will be independent and that the promoter is also represented on the board.

There is no maximum number of directors or requirement from an Irish standpoint for the board to have a majority of independent directors.

Appointments to the board of directors must be approved in advance by the Central Bank and each QIAIF director is required to complete an online individual questionnaire (IQ) in accordance with the Central Bank's fitness and probity regime (described in further detail below). Departures from the office of director must be notified to the Central Bank immediately.

The Central Bank operates a Fitness and Probity regime so as to ensure that office holders and individuals performing specified functions in the Irish financial services industry meet specified standards (the "Standards") of competence (so the individual has the necessary qualifications, skills and experience) and probity (so the individual is honest, fair and ethical). In this context, directors (and individuals performing certain other functions) will need to be pre-approved by the Central Bank and so will be required to complete an online IQ.

The appointing entity will be required to verify the details in the individual's online application, to complete initial and ongoing due diligence on the individuals and to maintain records. For certain other specified functions, Central Bank pre-approval is not necessary but initial and ongoing due diligence and records are required. All such individuals must confirm that they comply with the Standards, that they agree to abide by the Standards and that they will notify the relevant entity without delay if they no longer comply with the Standards.

The Irish Funds industry body issued a Corporate Governance Code for Collective Investment Schemes and Management Companies and a frequently asked questions document which aims to ensure that the board performs effective oversight of the Fund's activities. The code is stated to be voluntary but the Central Bank expects full compliance with the requirements of the code. The code contains certain recommendations as to board composition, including a recommendation for one independent director, a non-executive chairperson and a director representing the investment manager.

6.6 Legal Counsel

A QIAIF is required to appoint Irish legal counsel who will act as the main point of contact with the Central Bank in respect of the authorisation of the QIAIF.

6.7 Auditor

A QIAIF is required to produce annual audited accounts and to appoint an Irish auditor.

6.8 Company Secretary

A QIAIF is required to appoint an Irish secretary, which would ordinarily also provide the registered office for the QIAIF. Simmons & Simmons Corporate Services Limited regularly provides secretarial services to QIAIFs and all other types of Fund structures, including Section 110 Companies (discussed below). Further information is available upon request.

6.9 MLRO

An MLRO is required to be appointed. The MLRO need not be based in Ireland but must have requisite qualifications and experience in Irish anti-money laundering sufficient to undertake such a role. It is common for a third-party provider to be engaged as MLRO.

7. Investment Restrictions

A QIAIF is not currently subject to investment, borrowing or leverage restrictions. The investment objectives and policies of a QIAIF must be clearly defined in the offering documents with sufficient information to enable investors to be fully aware of the risks they are entering into. The offering documents must also identify a QIAIF's intentions in respect of borrowing and leverage.

A QIAIF (or the AIFM on its behalf) may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. This requirement does not apply to investments in other investment funds. It is also disapplied where the QIAIF is a venture capital, development capital or private equity QIAIF provided its offering documents indicate the intention regarding the exercise of legal and management control over underlying investments.

Where a QIAIF invests in units/shares of another Fund managed by the same AIFM or by an associated or related company, the manager of the Fund in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of shares/units.

8. Loan Originating QIAIFs

The Central Bank permits the authorisation of QIAIFs that originate loans ("LQIAIFs"). Irish regulated funds other than LQIAIFs are prohibited from originating loans, though they are permitted to acquire loans on the secondary market.

LQIAIFs are obliged to limit their operations to the business of issuing loans, investment in debt and credit instruments, participating in loans, participating in lending and to operations directly arising therefrom, to the exclusion of all other commercial business.

LQIAIFs are also permitted to invest in equity securities of entities or groups to which the LQIAIF lends or instruments which are held for treasury, cash management or hedging purposes.

The Central Bank has stipulated a number of conditions and details of the main conditions are set out below:

- It must have an authorised AIFM or be authorised as an internally managed QIAIF.
- The QIAIF (or its AIFM) must have a variety of procedures, policies and processes relating to a variety of matters linked to its loan origination activity.
- An LQIAIF must comply with rules regarding equal treatment of investors as regards due diligence opportunities afforded to them (though whether an investor takes up the opportunity is a matter for the investor).
- An LQIAIF must comply with a diversification requirement which will limit exposure to any one issuer or group to 25% of the Fund's net assets though this is subject to both a ramp-up and a ramp-down period at the beginning and end of the life of the QIAIF.
- An LQIAIF must comply with various requirements when acquiring a loan from a credit institution on a bilateral basis (but such requirements will not apply if the loan has been offered to multiple parties and is acquired on arms-length terms).
- An LQIAIF must have a comprehensive stress testing programme in place covering a variety of issues.
- An LQIAIF must be closed-ended.
- An LQIAIF is subject to a leverage restriction of 100% of NAV.
- An LQIAIF is subject to enhanced disclosure requirements as regards the offering documents and periodic reports.

9. Section 110 Companies

A QIAIF may, depending on the wording of the particular treaty and its legal form, be able to access a particular Double Taxation Treaty ("DTA"). However, where that is not possible, a common solution is for the QIAIF to hold underlying investments through an Irish special purpose vehicle ("SPV") which is capable of accessing the DTAs. Such structures require detailed analysis from a tax perspective.

A specific tax regime in Ireland applies to SPVs which acquire financial assets and meet certain conditions. This type of SPV is known as a "Section 110 Company" or "S110 Company". The Section 110 Company is financed by the issue of profit participating notes ("PPNs") (as opposed to shares/units) to investors.

Section 110 Companies are generally entitled to the benefits afforded by DTAs. Access to DTAs means that income paid to the Section 110 Company in respect of its foreign investments may be subject to reduced or zero withholding tax.

Profits arising from the activities of the Section 110 Company are chargeable to corporation tax as if it were a trading company. However, all expenses incurred wholly and exclusively in the course of the transaction, such as any interest expense incurred by the Section 110 Company (including profit participating interest), should be deductible in calculating its taxable profits. The establishment of the Section 110 Company is a straightforward and inexpensive process.

This structure may be used for a variety of asset classes and may involve layers of a subsidiary structure. A typical tier structure operates as follows:

- A Section 110 Company may be established as a 100% subsidiary of a QIAIF;
- Investors subscribe for shares/units in the QIAIFs which invests in the Section 110 Company;
- The QIAIF finances the Section 110 Company by subscribing for the PPN issued by the Section 110 Company;
- The Section 110 Company uses this financing to purchase investments in countries with which Ireland has a DTA (or any country required) for example underlying loan assets; and
- The income received by the Section 110 Company from its investments is paid out by the Section 110 Company to the QIAIF as interest under the PPN. A small amount of profit is left in the Section 110 Company which is taxed at 25%. While the income received by the Section 110 Company is subject to corporate tax, the matching payout of that income to the QIAIF under the PPN is treated as deductible expenditure thereby preserving the subsidiary's tax neutrality and avoiding any tax leakage. Profits made by the QIAIF can be paid to non-Irish resident investors free of Irish withholding tax.

If a QIAIF establishes a subsidiary the following Central Bank requirements will apply:

- The establishment of the subsidiary must receive prior approval from the Central Bank;
- Each subsidiary must be wholly owned and controlled by the QIAIF;
- The depositary must be appointed as depositary to the subsidiary and must be in a position to demonstrate to the Central Bank that it has sufficient controls in relation to each layer of the subsidiary structure;
- The constitutive and offering documents of the QIAIF must provide for the establishment of subsidiaries;
- The QIAIF must be party to any third-party appointments or contractual arrangements of the subsidiary;
- The constitutive document of the subsidiary must restrict control or holding shares in it;
- The subsidiary must have a majority of directors in common with the QIAIF; and
- The assets of the subsidiary must be valued in accordance with the QIAIF valuation rules.

10. Tax and Tax Reporting

The Irish tax regime is one of the primary reasons for Ireland's attraction as a location in which to domicile and/or provide services to QIAIFs. The primary legislative basis for the regime is the Taxes Consolidation Act 1997 (as amended). The Finance Act generally amends or supplements this each year but no major change to the current regime is considered likely in the foreseeable future.

Funds authorised as QIAIFs are tax exempt in Ireland. There are no Irish capital, stamp or other duties applicable to the issue, transfer, exchange or repurchase of shares or units in a QIAIF.

10.1 Exit tax

Irish resident investors are at first instance subject to an exit tax, but this is subject to numerous exemptions which are typically indicated in the QIAIF's subscription form.

Non-Irish resident investors are generally exempt from the exit tax, provided that such investors have completed the relevant non-resident declaration (typically contained in the QIAIF's subscription form) or where the QIAIF is in possession of written notice from the Irish tax authorities dispensing with declaration requirement for non-resident investors.

10.2 Tax residence

A QIAIF established in Ireland will generally be regarded as being tax resident in this jurisdiction. Where the QIAIF is a company, it should be centrally managed and controlled in Ireland and the directors of the company will need to conduct the affairs of the company to allow for this. A QIAIF constituted as a trust will be regarded as resident in Ireland if the trustee is resident in Ireland. CCFs are tax transparent and therefore the jurisdiction of residence of the underlying investors will be a key consideration for tax purposes.

10.3 Double tax treaties

Ireland has an extensive network of DTAs, with every major financial centre and/or developed economy. The agreements generally cover income tax, corporation tax and capital gains tax.

QIAIFs may not always be able to access treaty benefits due to their status in Ireland and accordingly specific advice should always be sought on relevant issues.

10.4 VAT

Value Added Tax ("VAT") is a consumption tax which providers of certain services are obliged to impose when billing for such service. Services comprising the management and administration of a QIAIF are typically exempt from VAT. Investment management services are exempt from VAT where the investment manager has been delegated complete management discretion.

10.5 IREF Withholding Tax

An Irish domiciled Fund which invests in Irish real estate may be considered to be an Irish Real Estate Fund ("IREF"). IREFs may be requested to apply 20% IREF withholding tax in respect of an IREF taxable event in respect of certain specified persons (subject to certain exceptions). Broadly, a specified person refers to an investor that is not otherwise subject to exit tax on a chargeable event, again, subject to certain exceptions (exceptions include, for example, a non-Irish resident pension scheme, regulated fund or life business authorised by an EU member state or an EEA state which is subject to supervisory and regulatory arrangements at least equivalent to those applied in Ireland).

10.6 Common Reporting Standard

Ireland has adopted the Common Reporting Standard ("CRS"). The CRS framework represents a globally coordinated approach to the disclosure of income earned by individuals and organisations in order to combat tax evasion. Investors in QIAIFs are required to provide certain information which may be reportable to the tax authority of the home jurisdiction of such investor.

10.7 FATCA

Subject to limited exceptions, Irish Funds are treated as 'foreign financial institutions' for FATCA purposes. As such, and again subject to limited exceptions, Funds/sub-funds need to register with the US Internal Revenue Service to obtain a Global Intermediary Identification Number and file annual returns with the Revenue Commissioners in respect of US reportable accounts.

11. Migration

Corporate funds from certain prescribed jurisdictions (including all major offshore financial centres) may migrate to Ireland by way of continuation as an ICAV.

Migration is an alternative to merging, an in specie redemption and subscription, or entering into a formal scheme of amalgamation.

Migration maximises efficiency and minimises any regulatory, tax or other burdens on the migrating fund as well as reducing the risk of investor leakage and maintenance of track record. A migrating fund would need to seek authorisation from the Central Bank, most likely as a QIAIF in the case of an alternative fund.

The migration process is relatively simple, streamlined and straight forward.

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12. Listing on Euronext Dublin

Certain promoters seek to have their Fund's units/shares listed on a recognised stock exchange for marketing purposes, primarily to satisfy the requirements of many institutions who may invest in such funds that the securities they invest in are listed on a recognised stock exchange, such as Euronext Dublin.

Euronext Dublin currently operates a limited checklist for QIAIFs and is very aware of the importance of speed to market for QIAIFs.

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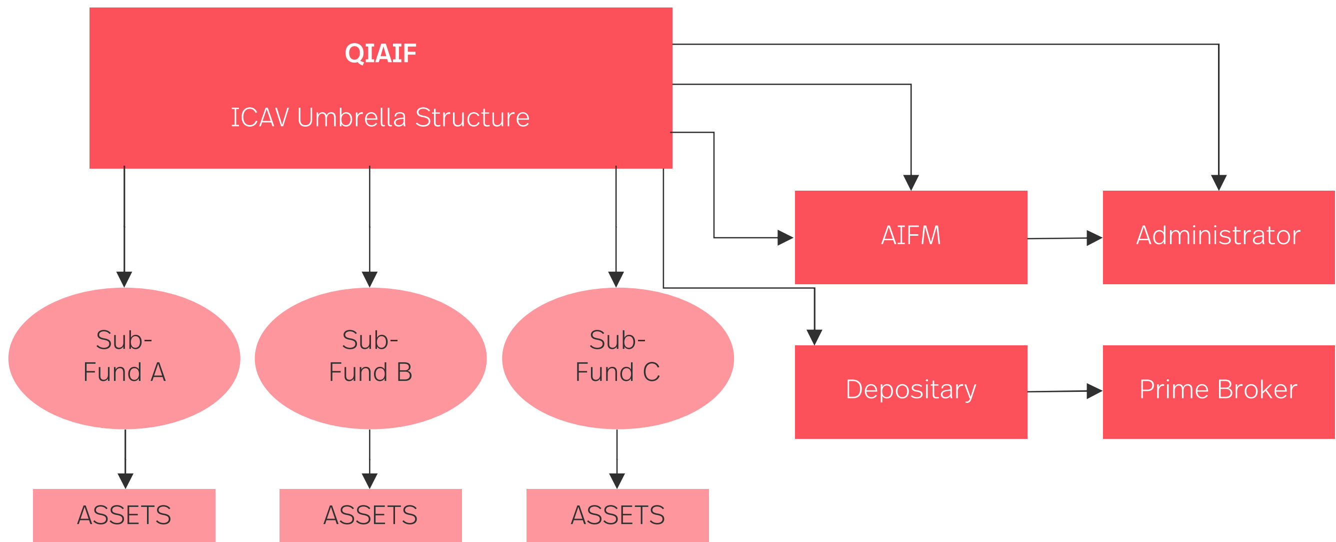
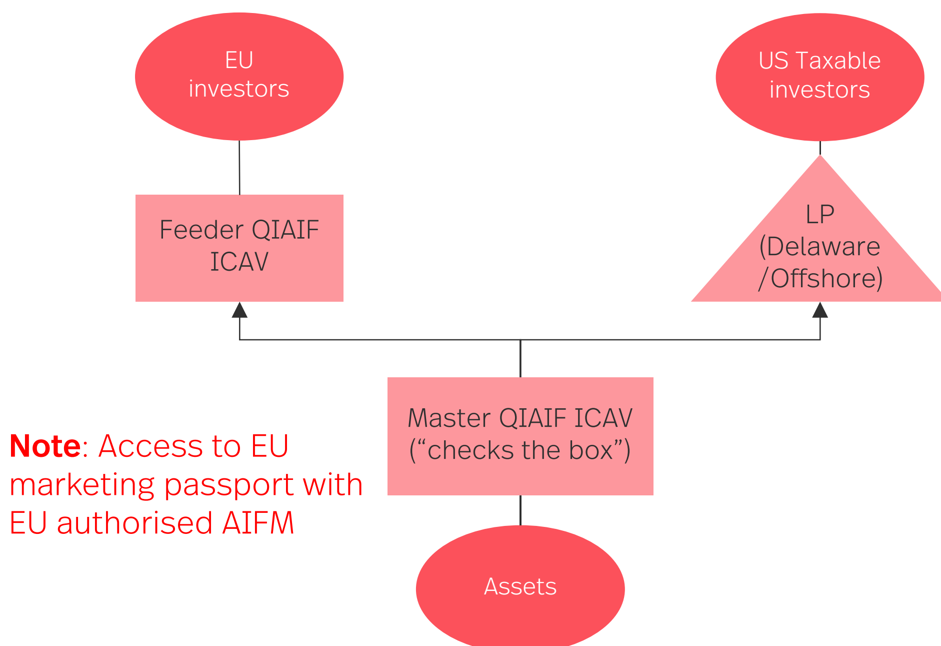
Appendix – Common QIAIF Structures

Type 1 – QIAIF umbrella structure



Type 2 – QIAIF ICAV master-feeder structure



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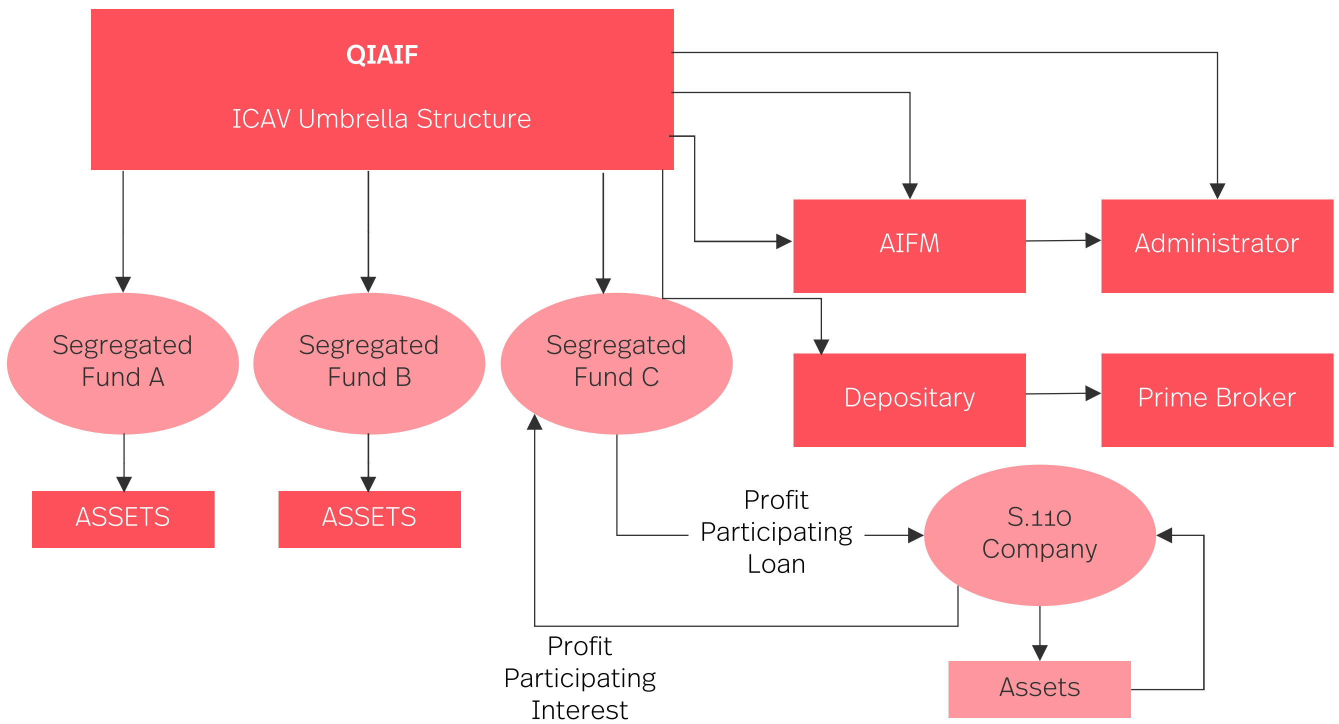
Type 3 – QIAIF umbrella structure and S110 Company



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