HM Treasury's Review of the UK Funds Regime – A Call for Input

Response of Simmons & Simmons LLP

Annex

	Question	Response
	Introduction	
1.	This call for input on the UK funds regime is necessarily wide-ranging. As the government would not be able to take forward all proposals immediately, what do you think the top 3 priority proposals should be for government implementation and why?	For further detail on our preferred options, please see the letter under cover of which we are submitting this Annex of responses. However, in brief, our top three priority proposals would be: 1. Introduction of a **new authorised closed-ended fund regime** – this could be achieved by way of significant reform of the existing Qualified Investor Scheme (**QIS**) regime, ideally within a reformed Collective Investment Scheme (**CIS**) regime. As for the objective to promoting 'productive finance', the regime should encompass the proposed long term asset fund (or **LTAF**) concept, which we see as a product that could help bridge the gap between the QIS and the Non-UCITS Retail Scheme (**NURS**). Such LTAF funds would be available for indirect (via DC pension schemes, for example) and advised direct retail investors. Interests in such a fund would be 'excluded securities' for the purposes of the Non-Mainstream Pooled Investments (**NMPI**) financial promotion rules. 2. Introduction of **a new unauthorised fund regime targeted at professional investors** – a professional investor fund (**PIF**) regime, which would permit a variety of legal forms, including an unauthorised open-ended corporate fund. 3. **Reform of the UK's tax regime for funds**, to create a simple, certain and efficient regime for the taxation of UK funds vehicles, which would include the ability to elect for fund level tax exemption, alongside a reform of the UK VAT rules to remove the current disincentive for UK managers managing UK domiciled funds. Each of these proposals is underpinned by a desire for any reform of the UK funds regime to be based on flexibility and pragmatism, allowing product providers a broad 'toolkit' of fund types, each of which would operate within a regulatory framework appropriate for the investors to which it could be promoted and, in all cases, based on the premise that the fund should achieve tax neutrality for its investors.

Question		Response
	Taxation	
2.	How effective were recent reforms to UK funds taxation in achieving their aims? Please explain your answer. Could anything have made these reforms more effective, particularly in terms of increasing the attractiveness of the UK as a location to set up funds?	One challenge of the current UK fund taxation regime for onshore funds is that it is built on a regime that was (and largely remains) appropriate for taxable UK retail investors investing in either equity or bond funds but does not cater for all the uses to which UK funds would wish to be put. These include • the need to accommodate international as well as UK-domiciled investors, • the increasingly advanced investment strategies adopted by investment managers involving more mixed asset strategies and more active management of fund portfolios and • the need for the UK fund taxation regime to be seen as comparable, both on paper and in practice, with equivalent funds tax regimes in jurisdictions, such as Ireland. The apparent complexity of the UK regime to international investors is a point that should not be underestimated. Whilst developments, such as (a) the bolt-on regimes for the white list, (b) the extensions to the UK fund taxation regime to cover property authorised investment funds and (c) the introduction of the flexibility for investment trusts to pay interest distributions, have each addressed particular concerns about aspects of the UK fund taxation regime, overall these have led to an increasingly piecemeal and fragmented approach. There is, therefore, a clear need for an holistic review of the UK funds taxation regime and, we suggest, a requirement to create an optional tax regime into which funds can elect. This would provide for a broad fund level tax exemption (and/or a significantly lower effective rate of tax on net profits), alongside reforms to the VAT treatment of the management of UK funds (and of related services, including administration) and the regulatory changes discussed elsewhere in this response. The creation of such an optional regime should not be considered in isolation, as there are changes that could still sensibly be made to the 'basic' UK fund taxation regime to make it more attractive to investors. For example, under the current QIS regime, the QIS must satisfy the genuine diversity of ownership (**GDO**) condition in order not to be taxed as a normal company. Whilst the approach of the GDO condition is preferable to the previous substantial holding rule, the former still prevents the use of QIS in situations where equivalent funds such as Irish QIAIFs can be used, for instance. as a 'fund of one' vehicle for institutional investors such as pension funds. We recommend that this and other adjustments to the existing UK fund taxation regime should be taken forward in parallel with the broader reforms discussed in our response.

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3.	Why has uptake of TEFs been limited? Please explain any operational or commercial factors that have influenced their uptake. How could these be addressed?	The TEF regime was introduced to address a particular issue with 'sticking' tax in balanced funds that were invested in by UK tax exempt investors, by effectively moving the point of taxation from the fund to the investor. However, the mechanism by which this was achieved, through the creation of a third form of distribution that could be paid by a TEF, meant that fund service providers such as administrators could not readily adjust their systems to take account of the requirements to operate a TEF, and similarly the fund platforms through which many retail investors invest could not accommodate the investor reporting requirements. This is a specific example of the general point that we make above – namely that, instead of responding to specific issues on a piecemeal basis, it would be preferable to take a holistic approach to how best these issues can be addressed, both now and in the future.
4.	How would the proposals in paragraph 2.9 improve tax efficiency of multi-asset authorised funds? Please explain how the proposals would work in practice and how a proportionate impact on HMRC could be ensured.	Certain of the proposals, such as reducing the fund effective tax rate, may be attractive, but looking at these proposals in the round, we feel that each would not of itself get to the core of the issue. Our recommendation, for an optional tax exemption for qualifying UK funds, would cut through the complexity of the various proposals with a simple, clear and efficient solution to the question of multi-asset funds. We note that, in a number of the proposals, HMT makes reference to the position of UK investors in relevant funds. Whilst the position of such investors does certainly need to be considered, in our view this is a separate point to what the optimal tax regime at fund level would be. Otherwise, any reform risks creating a solution that only caters for UK funds with UK investors who are prepared to accept some additional complexity, but which would still not be attractive to the broader international fund investor base.
5.	Are there are any additional changes the government could consider to reduce tax leakage in multi-asset/balanced authorised funds?	See our comments above.
6.	Where funds are already tax neutral, how would a tax-exempt status for funds influence decisions about	See our comments above. We strongly endorse the introduction of an optional tax exemption regime for qualifying UK funds (or, possibly, with the ability to pay a low effective rate of fund tax). We feel this approach would cater best for those managers who wish to retain their current funds structures with treaty access etc., whilst facilitating new forms of fund being created in the UK that are not currently attractive from a tax perspective.

Question		Response
	how and where to set up funds?	
7.	How would tax-exempt funds affect the competitiveness and attractiveness of the UK funds regime? Please explain your answer providing evidence and international comparisons where possible.	As noted above, many onshore competitor jurisdictions such as Ireland and Luxembourg, as well as offshore jurisdictions such as Cayman, Jersey and Guernsey, start from the position that a fund should be tax-exempt. The UK's current position is, therefore, an outlier internationally. Although the UK's approach arguably gives greater certainty on access to double tax treaties, we generally do not see the potential non-availability of double tax treaties to be a significant impediment to the adoption of tax exempt funds in other jurisdictions, either in circumstances where the fund is accepted as being entitled to treaty benefits or where these can be indirectly accessed, i.e., via an asset holding company established in the relevant jurisdiction. On the latter point, the reforms to UK fund taxation should also take account of the ability to use a UK fund in combination with the proposed new UK asset holding company regime (assuming that moves forward).
8.	What would be the likely impact if changes were made to the REIT regime in the areas discussed in paragraph 2.16? To what extent could investment in the UK be expected to increase, and what would be the drivers for this? Could such changes be expected to impact the extent to which funds with UK and foreign property assets are managed in the UK?	As set out in our response to the second asset holding company consultation, we support the proposed reforms to the UK REIT regime, both in that consultation and on the aspects set out in para 2.16 of the Call for Input. On a number of the latter points: • we support the removal of the interest cover test, given other UK tax changes including the introduction of the corporate interest restriction rule – particularly in times of financial stress, ensuring compliance with the test can be problematic and given the CIR, the original purpose of the test to prevent excess profit extraction from a REIT in tax deductible form should separately be addressed • the three year development rule can present challenges in the context of certain types of transaction, for example residential shared ownership arrangements where there is an initial disposal of an interest in the property following development, so we support a review of this rule to ensure it does not inhibit unnecessarily the activities of REITs • given the advent of exchanges such as IPSX, which anticipate the potential for single property REITs, we support the proposed changes to the property rental business conditions. Although HMRC's guidance for multi-let/multi-tenanted property is certainly helpful in many cases, it would be preferable to remove these conditions entirely • we can see the rationale for this proposal, although question whether a UK REIT would generally be the vehicle of choice for investment in non-UK real estate in practice.
9.	Are there any other reforms to the REIT regime that the	As noted above, we support the proposals in HMG's asset holding company consultation for reform of the REIT regime.

Question		Response
	government ought to consider, and why?	Separately, and as noted above, we consider that the trading/investment boundary and its application in the context of REITs should be reviewed, given developments in the real estate market including the growth in residential shared ownership arrangements and the more flexible occupation of commercial real estate under shorter term, non-leasehold arrangements. Although we accept that separate trading activities should remain taxable where conducted in a REIT we would question (a) whether the current cliff edge presented by the balance of business conditions remains appropriate and (b) whether the boundary should be re-drawn to make clear, for example, that serviced office type arrangements should be within the scope of the REIT's permitted property rental business activities.
10.	Regarding the proposals covered in this call for input, are there any specific considerations that the government ought to take account of in the context of the UK's double taxation treaty network? Please provide as much detail as possible.	We recommend that the UK take steps with key investor and investee jurisdictions to establish the entitlement of UK fund vehicles to treaty benefits. This could be by way of specific discussions with individual jurisdictions, but also generally to agree the non-application of the principal purpose test, limitation of benefit rules or similar restrictions for relevant UK fund vehicles. Where the fund is located in the same jurisdiction as its manager, this may assist from a substance perspective, although the extent to which substance can be 'borrowed' should be clarified. Separately, it would be helpful for HMRC to take steps to clarify the tax position of UK transparent funds such as limited partnerships (**LPs**) and authorised contractual schemes with relevant jurisdictions. When the ACS was introduced, it was expected that the treatment of this vehicle would be clarified and publicised, so that investors would see the ACS in a similar light to other vehicles such as Luxembourg FCPs and Irish CCFs. We would encourage this process to occur.
11.	What are the barriers to the use of UK-domiciled LP Funds and PFLPs, and how might tax changes help to address them? Please provide detailed proposals and explain your answers.	The barriers to the use of UK domiciled LPs are driven as much by legal and regulatory issues as by tax, but key considerations would include: • the abolition of stamp duty on the transfer of partnership interests, as whilst in practice this is generally not paid, it is a point that can be confusing to investors on e.g., secondaries transactions • ensuring that the proposed zero rating of management fees extends equally to the management of relevant fund LPs • clarification as to how partnerships should be registered for VAT purposes, rather than the current approach under which the general partner is typically regarded as the registrable person for VAT purposes • permitting the VAT grouping of an LP /its general partner (depending on the conclusion on the bullet above) with a related UK manager • disapplication of the Partnership (Accounts) Regulations 2008 regime in respect of English and Scottish LPs that are used as investment or fund vehicles

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		• enabling English LPs to elect to have legal personality (as Scottish LPs already have) • requiring the preparation of a partnership tax return and related tax computations only where there are UK resident limited partners, provided the LP in question is an "investment entity financial institution" reporting under the Common Reporting Standard • on a related point, clarification of the UK tax filing obligations for investor limited partners.
	Regulation	
12.	What benefit does fund authorisation bring to product providers beyond access to retail investors? Does this benefit vary depending on the specific investor base or investment strategy? What relevance does authorisation of a product have to its appeal to the UK market and to the international market?	Perception is an important element in attracting investors. Authorisation of a fund by the FCA is seen to be an important feature of some products for some target investor markets and FCA-authorised funds are accepted for local registration in many jurisdictions world-wide. Many institutional investors consider that greater freedoms and flexibility – in terms, for example, of different investment strategies and/or asset classes - are available where the fund is unauthorised, and that, given the level of sophistication of the investor base, these come without any concomitant loss of investor protection. This is particularly the case given that a fund manager will, in almost all cases, be subject to regulation in its own right. Other investors, though may take comfort from having an 'authorised fund' label as this is seen as giving reassurance that specified procedures have been followed at the product level and that there will be regulatory intervention in the event of compliance breaches. In addition, fund authorisation may be necessary or desirable if the fund is to be marketed in certain jurisdictions, particularly if product regulation is the norm in those jurisdictions. Semantics should not be ignored – marketing a fund which is described as 'unauthorised' can be, unsurprisingly, difficult if investors are relatively unsophisticated. However, being able to call it 'registered' can help – a parallel could be drawn here with the Luxembourg Reserved Alternative Investment Fund (**RAIF**), which is essentially unregulated but has a 'badge' which has been useful from a marketing perspective. In summary, therefore, the benefits of product regulation are often 'optical' rather than substantive and the question must be asked whether the additional costs which such regulation brings to managers who are already subject to significant regulatory obligations can be justified outside, perhaps, the retail sphere. However, we see benefit in providing a flexible range of authorised funds, which would be available to those product providers who see an advantage in product regulation. In our view, the best approach would be for the UK to offer a regulatory regime for funds, which ranges from, at one end of the spectrum, the existing suite of highly regulated funds which are primarily aimed at retail investors, through registered/quasi-regulated funds, such as QIS and LTAFs - which may appeal to sophisticated/advised retail investors

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		and/or indirect retail investors accessing funds via their DC pensions schemes – to, at the other end of the spectrum, fully unregulated funds (such as the proposed PIF), which would be limited to professional investors. At the less regulated end, the option for product providers to choose the middle option (which we refer to in our covering letter as 'Level 2'), with a lighter-touch level of regulation, such as that applicable to the Irish Qualifying Investor Alternative Investment Funds (**QIAIFs**), would be attractive, assuming that regulation could be achieved by way of an efficient, quick process. One option might be to rely on a form of professional certification that the fund documentation complies with relevant rules. Such certification is already permitted in terms of demonstrating compliance of constitutional documents for fund authorisations or changes to schemes under FSMA 2000 / Open-ended Investment Companies Regulations 2001 and might help in minimising the time taken by the FCA to authorise new funds (see our answers to Q.13 and Q. 14 below). In our view 'authorisation' by the FCA is an umbrella term that can apply to all fund types that are 'approved' by the FCA for promotion to a particular segment of the market – it is not the case that 'authorisation' must always mean the highly regulated, investor-protection focussed version of product regulation that it rightly does mean at the retail end of the spectrum. We would also draw comparison here with the regulatory regimes in other jurisdictions. In Ireland, for example, the QIAIF is clearly 'approved' by the Central Bank of Ireland (the **Central Bank**) notwithstanding the fast-track timeframe for such approval. It is accepted by the market that 'approval' in that context means something different from the way in which an Irish UCITS (for example) is 'approved' - but the fact remains that the QIAIF is understood to be approved by the Central Bank in a way that is helpful to its perception outside of Ireland.
13.	Do you have views on the current authorisation processes set out in legislation and how they could be improved?	The speed with which one can secure regulatory approval for the establishment of a QIAIF is often quoted as one of the primary attractions of Ireland as a domicile for 'professionals-only' alternative investment funds (**AIFs**). While a (relatively) lengthy process may be appropriate for retail-focussed funds, more lightly regulated or registered products aimed at the professional market will require speedier authorisation if they are to be competitive when compared to these products. The expectation must be created that regulatory approval time will be kept to an absolute minimum – ideally, less than a week. Both Ireland and Luxembourg have targeted speed to market as an important selling point to maintain their competitive positions as they look to attract non-UCITS non-retail fund promoters who might otherwise choose a traditional 'offshore' fund domicile where 'light touch regulation', in practice, means a filing process rather than an approval process. Both jurisdictions also operate forms of self-certified 'pre-approval', with Ireland, for example, offering a fast-track 'next business day regime'. The FCA has a reputation as being both a sensible and approachable regulator in the authorisation of fund products and such a reputation has a value in itself. However, we consider that the FCA should set itself (and publicise widely) a service

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		standard for authorisation of no more than two business days for any regulated/registered fund which is aimed at non-retail investors. As the level of sophistication of such investors would be high and there would be few prescriptive requirements in the FCA's COLL Sourcebook to comply with (including no fund-level investment and borrowing restrictions - perhaps with the except of loan-origination funds) , a 'fast-track' approval process for such funds should be feasible. In turn, this would make a public statement about the UK's desire to attract this type of vehicle back onshore. Other ways of speeding up the approval process could include: • **for non-retail fund authorisations**: placing reliance on solicitors to legally certify compliance of documentation with relevant rules or providing more guidance (perhaps, a checklist) for managers and lawyers as to the type of questions they might expect to have to answer when submitting an application. A precedent for this already exists for the solicitors' certificate required to certify compliance of the constitutional document for authorised funds with relevant regulations. • **for all fund authorisations**: the FCA has one month to approve changes to authorised funds. Often, we see a delay because the FCA has raised substantively new questions at a very late stage of the approval process. When this happens the FCA frequently impose very tight response times within which our client needs to respond (sometimes as little as a matter of hours). Our concern with this is that clients may struggle to obtain the relevant internal input/confirmations required and may be forced to make product design decisions without sufficient time to think them through. This could result in poor outcomes for our clients and investors. Clearly, it is right that the FCA reviews all applications with care. However, we would suggest the FCA agrees to reasonable standard response time expectations as asking questions earlier in the process would greatly assist. • **for all fund authorisations**: Issuing product reference numbers (**PRNs**): Sub-funds (as well as standalone funds and umbrella funds) are given unique PRNs that must be included in the prospectus. Where the client is seeking to establish a new sub-fund in an existing umbrella, the FCA will only issue the PRN when it has received Form FN and the updated final fund documents. In practice, this means that the client must update and re-issue the prospectus twice – first, to obtain the PRN and second to then include it in the prospectus. This is inefficient. In addition, we are not aware that there is a specific timeframe within which a PRN has to be provided by the FCA, which often makes it difficult for our clients to set a launch date or initial offer period for a new sub-fund prior to seeking approval. We would suggest this process is refined such that the PRN is provided at or around the same time the approval letter is issued by the FCA. We understand this would mirror the current process for the authorisation of new umbrellas. • **communication of processes/information**: As a more general matter, it would be helpful if the FCA was able to include more information on its fund approval processes and any relevant changes to it (including changes to Forms etc, the process for filing documents) on its website. Such information could include how the FCA would, in practical terms, expect the authorisation process to play out for fund authorisations and various changes to existing funds. This would help fund

Question		Response
		management staff understand the process better and may avoid undue pressure being put on managers and/or the FCA where timescales are tight.
14.	How do the FCA's timescales for fund authorisation compare internationally? Is there value in providing greater certainty about these timescales? Other than by reducing the statutory time limit, how could this be achieved and what benefits would it bring?	The statutory requirement (as opposed to service standards) for the FCA to conclude applications for non-UCITS (NURS and QIS) within six months of receipt of a complete application is too long. When planning a fund launch, what is needed above anything is certainty and this is provided not by flexible service standards but by an applicable statutory framework. Any new fund regime aimed at professional investors which permits applications for regulated product status will need to adhere to materially shorter timeframes – ideally, no more than two business days' turnaround – in order to be competitive. Looking at the alternatives which are already available, we understand that, although the Article 17(3) of the UCITS Directive specifies a maximum period of two months, an Irish UCITS generally has to wait only 10 to 12 weeks for authorisation to be obtained, starting from the initial submission of draft documents to the Central Bank (although it may be possible to reduce the timeframe for approval in certain circumstances). In Luxembourg, the timescale is the same. For Irish retail investor alternative investment funds (**RIAIFs**), the timeframes are similar to a UCITS. Irish QIAIFs, other than real estate, life settlements and loan origination, can take advantage of a 24 hour approval process whereby a filing is made with the Central Bank – this includes offering documents and signed material agreements which are dated the following business day. The Central Bank then issues its approval letter on the following business day. The AIFM, management company or board of the fund (depending on its legal structure) and the legal advisors provide confirmations to the Central Bank that the documentation complies with requirements. For real estate, life settlement and loan origination funds, a pre-submission is required and timelines are again the same as for a UCITS or RIAIF – we understand that, although it has been in place for a year, the requirement for a pre-submission is intended to be a temporary one. For non-UCITS regulated funds in Luxembourg, we understand that an indicative timeline would be as follows: • Specialised Investment Funds (**SIFs**): 4 to 8 weeks • Non-UCITS retail "Undertakings for Collective Investments" (or Part II) funds: 8 to 10 weeks • Investment Companies in Risk Capital (**SICARs**): 8 to 10 weeks. These are clearly more attractive than the possibility of waiting six months for FCA approval. That said, we do appreciate that, in reality, the FCA does consistently achieve above 90% compliance with its service standards. This is undoubtedly a positive message which needs to be made clear to the international market and we would strongly suggest that the FCA look to publicise this achievement more effectively. In addition, the UK authorisation process has historically been greatly assisted by the quality and helpful attitude of case officers. These bring a degree of open dialogue to the process which distinguishes the UK from both Ireland and

Question		Response
		Luxembourg in a positive way. It is critical that both the quality and the attitude of front-line staff is maintained as this provides a real (albeit unmeasurable) differentiator for the UK.
15.	What would you like the QIS structure to enable you to do that is not currently possible? What are the existing impediments to your suggested strategies, and why would the QIS be the preferred UK structure for those strategies?	In our view, the question posed does not go to the heart of the issue. Although many strategies could currently be established through a QIS, very often they are not - clients prefer the Irish QIAIF sometimes, even where they have a stated preference for using the UK and only selling products to UK investors. The QIS regime would need to be amended and improved significantly if it is to provide a viable alternative to the Irish QIAIF (including rectification of the VAT position and an extension of the GDO condition as identified in our response to Q.2 above). Given that the QIS is intended to be, in essence, a fund vehicle for 'professional' investors (in the broad sense of the word), we believe that the current level of product regulation of investment and borrowing powers is inappropriate. Specifically, we query the need for the existing restrictions on the types of investment that can be included in a QIS portfolio. Although the current reference to the Regulated Activities Order covers almost all potential scenarios, we consider that a fund which is available only to professional or sophisticated investors and which is required to describe its investment strategy and its risks in the prospectus should not be constrained by a prescriptive - and static - list of eligible assets, no matter how extensive that list may be. Funds must be innovative and nimble in their ability to invest in new asset classes if they are to meet the demands of their investors and offer them a real choice of investment vehicle. At the same time, fund managers require certainty as to what is a permitted investment and what is not. To square this circle, the fund must be able to capture evolving, but not yet mainstream, asset classes, such as digital assets, without having to wait for the regulatory changes necessary to explicitly permit such investment to be put in place. A list of features and/or changes that we would regard as necessary includes: • removal of all detailed investment and borrowing powers. The QIS manager should, instead, be able to rely on product disclosure and investor due diligence to provide the necessary transparency to investors. • specifically, removal of the upper limit on borrowing of 100% - this is a function of the commercial offering that (in a 'professionals' only fund) should be capable of being set between the manager/ provider and the investors. If removed, a requirement for clear disclosure of the maximum leverage permitted could be built into product disclosure rules. • enabling an Alternative Investment Fund Managers Directive (**AIFMD**) derived minimum baseline and a non-AIFMD compliant regime where the fund is not being sold into the EU and investors might not want the added cost of compliance • provision of clarity on the fund's ability to originate loans/ light touch lending regime

Question		Response
		• for single investor funds, reform of the GDO condition, as discussed above, to facilitate institutional single investor funds by treating a QIS fund or sub-fund which has a single investor within a specified category of institutional investors (e.g., a registered pension scheme) as meeting the GDO condition • VAT – as with other UK domiciled funds, supplies of management services (and other core supplies such as administration) to a QIS should be zero rated for VAT purposes • distribution of capital – some pension fund investors value the ability to structure retirement provision vehicles based on the flexibility to distribute out of capital with appropriate disclosure • the ability to smooth income or not to pay / be deemed to have paid income • permitting the establishment of closed-ended sub-funds for QIS - alongside the ability to establish closed-ended funds as stand-alone vehicles to allow alignment to an illiquid asset base, we would suggest that the logical extension of that would be to also allow sub-funds of a QIS umbrella fund to be established as closed-ended, even where other sub-funds of the same umbrella are open-ended. Such flexibility exists in other jurisdictions and allows efficient cost management by enabling single umbrella fund solutions to be used across the liquidity spectrum • clarification around the use of subsidiary vehicles or asset-holding companies. These are permitted for holding overseas immovables but, even in the case of property funds investing in the UK, it is often desirable to invest through a wholly owned company. Although, at present, it seems likely that a QIS could invest through subsidiaries (on the basis that there is no equivalent in the QIS rules of the concentration limits for a UCITS that would prevent a QIS - or a NURS - holding 100% of the issued capital of a company) certainty on this point is needed and the specific inclusion of COLL8.4.11A (R) allowing intermediate holding companies for investment in overseas property raises doubt. • removal of the requirement for an ICVC to spread investment risk and for a QIS to "provide a spread of risk". • consideration of the role of the QIS depositary and of a prime broker – for an Irish QIAIF, for example, prime brokerage documents must be filed with the Central Bank but, otherwise, there are no mandatory requirements and the documents are not formally reviewed. The prime broker is appointed by the depositary as a sub-custodian, so the Central Bank relies on the depositary to put appropriate arrangements in place to ensure that the assets of the fund are sufficiently within the control of the depositary and that it receives sufficient information to fulfil its duties. • removal of the requirement to have 'reasonable grounds' to reject a subscription. No such requirement exists in respect of the equivalent fund types in either Ireland or Luxembourg and the authorised fund manager (**AFM**) - or even the investment manager – should have discretion to determine from whom it will, or will not, accept subscriptions. Unless, that is, it is accepted that under current rules a "reasonable ground" includes the exercise of such a broad discretion if set out in the prospectus - if that is, indeed, the case, there should be clarification that current rules permit broad discretion.

Question		Response
		• In relation to redemptions, we would argue that a broader power to compulsorily redeem would be welcome • review of the prospectus content requirements - although these are not, in themselves, particularly onerous we would strongly suggest that a requirement to include (as a minimum) the information necessary for investors to make an informed assessment of the fund and its risks would be sufficient in a 'professionals only' fund.
16.	Do you think that the range of QIS permitted investments should be expanded? If so, in what way should it be expanded, what impact would this have, and would it still be appropriate for sophisticated retail investors?	Rather than expanding the list of permitted investments, we would suggest that there need be no such list. Instead, reliance would be placed on the FCA's rule COLL 8.4.3R (1) – "any assets or investments to which [the QIS] is dedicated" and appropriate disclosure in the fund's prospectus (Note that, in this context, the term 'investments' is not italicised, so does not refer to the defined term 'investment' found in the Glossary of terms within the FCA's Handbook.)
17.	Do you think that the QIS borrowing cap should be raised or QIS constraints on derivatives exposure should be relaxed? If so, to what magnitude and why? Would this be appropriate for sophisticated retail investors?	See our response to Q.15 above. We would note that the Irish QIAIF has no meaningful investment and borrowing restrictions – we consider that, even with its statutory duty of consumer protection, it would be perfectly reasonable for the FCA to take the view that sophisticated retail investors do not need protection through regulatory baselines, such as, leverage limits, provided that there are effective disclosure requirements in place to ensure the investors receive the right level of information on which to base their investment decisions.
18.	Do you agree that the QIS sub-fund structure could be improved? If so, how?	As the ICVC has statutory segregation, we take it that the question relates to Authorised Contractual schemes (**ACS**) and/or Authorised Unit Trusts (**AUTs**). We are not convinced that a lack of statutory segregation for the ACS and AUT is a problem that requires to be 'fixed' – legally speaking, it is arguable that it is not necessary to provide statutory protection as this is achieved by contract law and trust law respectively.

Question		Response
	Would greater clarity for the segregation of assets between sub-funds via legislation or rules be helpful? Please provide details.	
	Wider reform	
19.	Do you agree that reforms to enhance the attractiveness of the UK funds regime should focus on appealing to the creation of entirely new funds that have not yet been set up?	Yes. Despite the attractiveness of having the fund, its manager and its service providers in the same jurisdiction, the reality is that re-domiciling existing funds can be difficult (and therefore costly) to ensure it does not incur undesired exposure to tax or fall foul of anti-avoidance provisions. Our clients have been consistent in their message to us that, while they would consider establishing new funds in the UK, they would be far less likely to move existing funds onshore under the current regime. Even so, it would be sensible to facilitate re-domiciliation of a fund as far as possible by ensuring (as many other jurisdictions already do) continuity of form, but now governed by local – here, UK – law.
20.	Why do firms choose to locate their funds in other jurisdictions in cases where the UK's funds regime has a comparable offering, for example ETFs? Are there steps which could help to address this following the potential reforms to the UK funds regime discussed in this call for input, and would the scope to address this vary depending on the type of	There are a number of reasons. Primarily, as explained elsewhere in our response, the UK fund taxation regime is unattractive – it is as being overly complex, difficult to explain concisely to investors and unable to provide the certainty required by them. Second, 'if it ain't broke, don't fix it'. Put another way, there is inertia towards what is already familiar. Firms which have typically set up, say, Cayman hedge funds or Irish QIAIFs know what to expect in terms of structure, regulatory behaviour, costs etc. There would need to be a substantial 'pro' (or significant investor demand) to outweigh the 'con' of having to go through new processes and familiarise oneself with new rules before it makes commercial sense to establish a fund in a new jurisdiction. Thirdly, investors like certainty – product recognition and confidence are important factors. Existing, established fund types such as UCITS or Luxembourg RAIFs have a 'name' or a 'brand', which can take some considerable time to build up (and sometimes the brand fails to take off, as evidenced by the lack of European Long-term Investment Funds, or ELTIFs.) It is likely that the tax and regulatory advantages of a UK fund type would need to be sold hard and sold over a period of time before any real progress is seen.

Question		Response
	fund or target investor market?	There are, though, definite benefits to establishing in the UK provided the underlying conditions are correct. As the Call for Input correctly notes, the UK has a significant advantage in its reputation as having a high standard of regulation and a large pool of expertise in its workforce. However, several clients have informed us that the UK consistently fails to promote itself at conferences and other financial services events, which we imagine would be a relatively easy matter to put right with appropriate support from Government and a ring-fenced budget. We consider that the UK should look to establish a reputation for something 'new', rather than looking to merely compete with Ireland or other jurisdictions for existing 'brand excellence'. We therefore do not consider that the UK should be looking to establish itself as an ETF domicile – that ship has largely sailed. A reputation for innovation in areas such as sustainable investing or in technology would help set it apart from any other jurisdiction worldwide in aspects which will be of significant future benefit and which might offer a future-proofed solution for the UK investment management industry that dovetails with other governmental policy objectives. There would, though, be only a limited window of opportunity in which to gain such an advantage as other jurisdictions can be expected to be active in these areas in the near future and we are already seeing that with initiatives such as SFDR, the EU is being seen to lead on some of the future challenges that the funds industry faces.
21.	Do you agree that reforms to enhance the attractiveness of the UK funds regime should focus on appealing to AIFs targeting international markets? Which markets would be most valuable and what would be the key obstacles to overcome in each?	Yes. Despite the various disadvantages of Brexit – in particular, the loss of the marketing passport – the UK's funds industry remains robust and should take the opportunities now open to it to re-develop its relationships with non-EU jurisdictions. Outside the EU, the most obvious markets to target for the near future are the US/Canada, the Gulf and China/ the Far East.
22.	Do you agree that new UK fund administration jobs associated with new UK funds would be likely to locate outside London?	We accept that there is no particular reason why the large majority of administration (and other service provider) jobs would need to be based in London and see no justification for these being very largely confined to the South-East of England. However, what would be needed is a combination of • a sufficiently large, sufficiently educated and appropriately trained work pool

Question		Response
	How could the government encourage fund administration providers to locate jobs in specific UK regions?	• high quality and reliable IT systems • good infrastructure • an attractive location where potential workers would wish to be based and • potentially tax incentives to establish in such locations as, for example, there have been in the past with other industries in the North-East or Northern Ireland or with the recently confirmed UK freeport initiative.
23.	How can the government ensure the UK offers the right expertise for fund administration activity?	We do not offer a view on this question.
24.	Are there specific barriers to the use of ITCs, either from the perspective of firms creating fund products or from the perspective of investors seeking to access them? Are there specific steps which could address these?	Although ITCs serve a role in offering a publicly listed closed-ended fund, they have a number of characteristics which make them unsuitable for all investors or investment strategies, while the cost of listing an ITC can be disproportionate.
25.	Should asset managers be required to justify their use of either closed-ended or open-ended structures? How effective might this requirement be, and what are the advantages or disadvantages of this approach?	No – where rules permit a choice of an open- or a closed-ended structure, appropriate transparency to the prospective investor is sufficient. Institutional and professional investors, along with their advisers, are more than capable of determining whether or not they agree with the proposed structure - if they have concerns, they will simply not invest. The appropriate level of liquidity should be driven by the liquidity in the asset class and investor expectations.

Question		Response
26.	Should the distribution out of capital be permitted? What types of products would this facilitate and what investment or financial planning objectives would they meet for investors? What are the possible advantages, disadvantages and risks for investors?	From a purely regulatory perspective and provided there is appropriate disclosure to investors, we see no reason why authorised funds should be prohibited from distributing capital where (for example, for income producing strategies/retirement products) distribution of returns takes priority and the nature of those payments is secondary. The tax position of UK taxable investors receiving such distributions of capital would need to be addressed as part of any such flexibility (as the current UK investor tax regime does not anticipate distributions of capital) but we see this as a process point rather than a fundamental issue with this proposal, and one which may be of limited relevance for funds that are targeted at tax exempt or non-UK investors.
27.	How do you consider that such a change might be delivered? Please explain your answer, providing specific examples of rules, how they could be changed, and the effect of the changes.	We believe that this can be achieved through a principles-based approach, which does not mandate that distributions must be income in nature but, instead, places reliance on the fund's distribution policy having been appropriately disclosed to investors.
28.	Do you foresee any issues with the LTAF adopting the current tax rules for authorised investment funds? Would the nature of an LTAF's investments, and the tax treatment of the income it receives in respect of those	If the current regime were to be maintained without the changes recommended elsewhere in this response being adopted, we see that tax inefficiencies could arise. However, if those recommended changes are adopted, we see no reason that the LTAF could not also be brought into the UK fund taxation regime, with the ability to opt for tax exemption or a low effective tax rate at LTAF level, depending on the fund's requirements.

Question		Response
	investments, mean that the current rules for authorised funds lead to tax inefficient outcomes?	
29.	Are there any other tax considerations, outside of those that follow from the adoption of the current tax rules for authorised funds, that will be important to the success of the LTAF? Please explain your answer.	We discuss elsewhere our recommendations to extend VAT zero rating to management and related services (including administration) provided to relevant UK funds. This should apply equally to LTAFs. Other measures could also be considered, such as ensuring a broad exemption from withholding taxes, both on payments by and to the LTAF, ensuring that the LTAF can be used successfully in combination with an asset holding company (assuming that regime moves forward) and, given the longer term and less liquid nature of LTAFs, ensuring that UK stamp taxes do not apply on the transfer of interests in the LTAF itself.
30.	How would each of the proposed unauthorised fund structures add value alongside existing authorised and unauthorised UK fund structures, including the QIS? Would they bring value alongside each other? Would they bring unnecessary complexity? What would each structure allow fund managers and investors to do that they are unable to do currently in the UK regime?	We consider that there remains a role for unauthorised fund structures such as the LP, AUT and the investment trust. These have co-existed with the authorised funds regime for many years (and, in fact, pre-dated it). For some clients, an unauthorised fund structure fits their purpose as they look to the manager and to their own due diligence for comfort rather than expecting this through product-level regulation. To this we would add an unauthorised open-ended corporate vehicle – akin to the ICVC but established under its own corporate code separate to the Open-ended Investment Companies Regulations 2001 and offering segregated liability between sub-funds if established in umbrella form. There is clearly a market for such funds - in the survey of clients, to which we refer in our covering letter and which we append to our submission, 88% of respondents favoured the creation of an unauthorised open-ended UK corporate vehicle (see slide 24 of the Appendix). We would support the introduction of a contractual PIF along the lines proposed by AREF.

Question		Response
	Please address each proposed unauthorised structure separately and indicate which of the proposed unauthorised structures you consider most important.	
31.	Would these unauthorised structures support the government's work on facilitating investment in long-term and productive assets, as outlined in Chapter 1?	Unauthorised structures investing in illiquid assets have the capability to provide capital to the productive finance sector, albeit that the primary initiative in that space is, we believe, focussed on development of an authorised LTAF.
32.	How do you think the government could best achieve consistent branding for UK fund structures which target only professional investors?	A reformed QIS, with flexible light-touch regulation in the manner of the Irish QIAIF could be a powerful brand. When the QIAIF was introduced in 2013, it replaced the Qualified Investor Fund as the Central Bank took the opportunity to update its rules whilst, at the same time, implementing the EU's AIFMD. The reformed QIS could be the 'umbrella' brand for the UK's professional fund regime incorporating the full range of fund types: • corporate • unit trust • contractual (including LP) in each case both open and closed-ended if that distinction is maintained.
33.	Do you think that these unauthorised structures should be unregulated collective investment schemes? If you consider any 'light-touch'	See our covering letter and our response to Q.12 above for a detailed explanation of our preferred UK regime (with a range from heavily regulated, authorised funds for retail investors to unauthorised, very lightly regulated funds for professional investors).

Question		Response
	authorisation necessary or desirable, what do you understand this term to mean and what form could it take? Why would it be beneficial for investors, and how could it be explained to them in a way that avoids confusion with the regulatory assurances of fully-authorised structures?	
34.	Do you think these structures should have flexibility on whether they are open-ended or closed-ended? Should they have flexibility on whether they are listed or non-listed? How important is this?	We are strongly of the view that, for a professionals-only or 'professionals + sophisticated retail' fund such as the QIS, flexibility should be offered as to whether a fund operates as fully open-ended, fully closed (or somewhere in between). The fund structure should be dictated by the liquidity in the asset base and by investor expectations on the back of a clear and specific pre-contract disclosure regime. All such variations should be available within an authorised fund product. Listing is a function of the commercial 'offer' to investors as regards secondary liquidity and should be neither mandated nor prohibited.
35.	Do you think these vehicles should or could be implemented as part of existing structures set out in legislation? Please provide details. If not, please explain why not.	See our response to Q.32 above. We consider that a reformed QIS could incorporate a variety of fund types with a light touch authorisation that could be highly attractive to both managers and investors.

Question		Response
36.	Are there any specific tax treatments that would be either necessary or desirable to support the successful introduction of new unauthorised fund vehicles in the UK? Please provide detail of how and where this is the case.	See our comments elsewhere, but to summarise: • the fund should be able to elect into tax exempt status (or to pay a low effective tax rate at the fund's option) • Supplies of management and related services (including administration) should be zero rated • No UK stamp taxes should apply on dealing in fund interests. As noted earlier, our view is that the tax position of fund investors should be considered separately from that of the fund itself, given that relevant funds may not have UK investors or those UK investors who invest many be tax exempt. However, a simple solution would be for the fund to be treated as an offshore fund for UK tax purposes, with the ability to elect for reporting fund status, given this is well understood by relevant investors. The position of non-UK domiciled investors must be addressed by treating the interests in the fund (and any income derived) as non-UK situs for remittance purposes.
37.	Are there any interactions with wider tax policy that the introduction of new unauthorised vehicles would need to navigate, in order to avoid unintended consequences?	The same considerations as those relevant to equivalent fund vehicles established outside the UK would apply.
38.	Are there other things government should consider as part of this review of the UK funds regime, or proposals for enhancements to the UK funds regime which the government has not included in this call for input? If so, how important are they and how would you like to see them prioritised	We refer to our covering letter, which sets out some priorities beyond the scope of the Call for Input but our 'wish list' would include the following: • tokenised funds to enable future development of the fund management industry to capture operational efficiencies provided by distributed ledger technology • we reiterate the need for Government support for and public backing of the new regime through a permanently-staffed promotional 'UK Funds' body working with industry and service provider firms • Government grants/contributions to costs of setting up the first tranche. of funds under the new regime as a means of encouraging first movers to choose the UK in the same way as has been successfully rolled out in Singapore • tax pledge – our clients tell us that one of the key aspects of the UK funds regime that acts as a negative factor when considering fund domicile is the perception that the fund regulation landscape is in some way 'politicised' and therefore

Question		Response
	in relation to the proposals explored in this call for input?	potentially susceptible to changing governments and governmental priorities. Finding a way to stabilise the taxation regime by some means of 'entrenchment' or tax pledge as pertains in some offshore jurisdictions might be worth exploring • removal of UCITS / NURS distinction unless necessary in the event of an 'equivalence' ruling by the EU Commission • reform of the entire CIS regime – the patchwork of rules and exclusions that comprise the UK regulatory concept of the "collective investment scheme" has been under strain for some time and was stretched further by the introduction of a competing and overlapping regime under AIFMD. The Call for Input might be an opportunity to think about the future regulation of investment fund vehicles more holistically.