

# Establishing a QIAIF in Ireland

In this Note, we examine the principal questions when establishing a Qualifying Investor Alternative Investment Fund (**QIAIF**) structure in Ireland:

- **What are the most common fund structures for a QIAIF?**
- **Key Service Providers**
- **Directors and Other Personnel**
- **What documents are required when setting up a QIAIF?**
- **What costs are involved when setting up a QIAIF?**
- **Illustrative timeline for setting up a QIAIF**



## What are the most common fund structures for a QIAIF?

A QIAIF in Ireland can be established using five structures:

- **ICAV (Irish Collective Asset-management Vehicle)** – the vehicle of choice for funds established in Ireland. An ICAV is able to “check the box” for US tax purposes, making it a popular choice for hedge fund managers. It is exempt from most of Irish and EU company law requirements, such as the risk-spreading principle.
- **ILP (Investment Limited Partnership)** – the default fund structure for closed-ended funds, particularly those with a private equity focus. An ILP acts through its general partner, whose liability is unlimited. Investors become limited partners with liability limited to the commitment amount. An ILP is a tax transparent structure.
- **Unit Trust** – a trust structure whereby the depositary is a trustee and investors (unitholders) are beneficiaries. Liability of unitholders is limited under the trust deed.
- a **Public Limited company / Investment Company** - the most popular structure prior to the introduction of ICAVs, they have become largely obsolete since then and are now rarely utilised in the context of a new QIAIF.
- a **CCF (Common Contractual Fund)** – a pooling vehicle established under the law of contract by the deed of constitution to which an AIFM and depositary will be party. Under Irish law, it is a tax transparent structure. The liability of unitholders is limited under the deed of constitution to the amount contributed or agreed to be contributed for units.

A QIAIF can be established as a standalone fund or as an umbrella structure with any number of sub-funds. Each sub-fund is treated as a separate collective investment scheme with a separate pool of assets and liabilities. QIAIF ICAVs are permitted to prepare separate accounts at a sub-fund level.

## Key Service Providers

### a) AIFM

An Alternative Investment Fund Manager (**AIFM**) is required to be appointed.

An AIFM may be

- fully authorised by the Central Bank of Ireland (**Central Bank**) (or by another EU regulatory authority and passported into Ireland);
- Categorised as a 'Registered AIFM' (this is only available to AIFMs who fall beneath a threshold of assets under management (**AUM**) of EUR 100M / 500 M if only acting in respect of closed-ended funds); or
- a non-EU investment manager who is designated as an AIFM.

Authorised AIFMs are subject to the full requirements of the AIFMD and can take advantage of the AIFM marketing passport, and can manage EU AIFs on a cross-border basis.

A registered AIFM has lighter requirements to satisfy given the threshold limitations placed on a registered AIFM. It should be noted that a registered AIFM is not afforded benefits under the AIFMD unless they apply to be fully authorised. This means that they are limited to managing their funds in Ireland. They cannot market their funds in other EU jurisdictions, nor can they manage funds on a cross-border basis.

A non-EU investment manager can be designated an AIFM but would be required to comply with certain requirements in the AIFMD and the marketing passport would not be available. A non-EU AIFM will need to receive clearance from the Central Bank in advance of its appointment.

### b) Depositary

Under the AIFMD, the AIFM along with the ICAV is required to appoint a single Irish depositary. Any depositary appointed must be approved by the Central Bank. This is to create a higher safeguarding mechanism for investors.

The duties of a depositary include:

- Safekeeping the assets of the QIAIF;
- Ensuring that the sale, issue, redemption (if relevant) 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
- Cash flow monitoring; and
- Oversight responsibility.

### c) Administrator

An Irish administrator is required to be appointed and approved by the Central Bank.

The main duties of the administrator include:

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

### d) Investment Manager

If a separate investment manager is to be appointed in addition to the AIFM and if the proposed investment manager is not an Irish entity already approved by the Central Bank (and they do not appear on the relevant Central Bank register), the investment manager must first be cleared by the Central Bank to act in advance of the authorisation/approval of the QIAIF.

This also applies 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 the relevant competent authority. The firm must complete an online application and submit information concerning its expertise, integrity and adequacy of financial resources.

If an investment manager falls into any of the following categories they will not be subject to any additional reviews:

- A UCITS management company authorised under the UCITS Directive;
- An investment firm authorised under MiFID to provide portfolio management;
- A credit institution authorised under Directive 2006/48/EC having the approval to provide portfolio management under MiFID; or
- An AIFM authorised under AIFMD.

## Directors and Other Personnel

### a) Directors

A minimum of two Irish resident directors is necessary. However, the Corporate Governance Code for Collective Investment Schemes and Management Companies (**the Code**) published by Irish Funds Industry Association (**Irish Funds**) recommends three directors as a Board's minimum size. The Code also states that there should be at least one independent director. This independent director is typically also appointed to chair the Board of directors.

There is no requirement in respect of a maximum number of directors. However, it is recommended to appoint an odd number of directors, so that there will always be a majority vote.

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 also be notified to the Central Bank immediately.

The Central Bank operates a Fitness and Probity (**F&P**) regime to ensure that office holders and individuals performing specified functions in the Irish financial services industry meet specified standards (**the Standards**) of competence (having the necessary qualifications, skills and experience) and probity (acting honestly, fairly and ethically). 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.

As part of the F&P process, the QIAIF will be required, in respect of each proposed director, to:

- complete initial and ongoing due diligence on the individuals;
- approve each proposed director's appointment to the Board of directors; and
- 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 directors 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. All directors will need to reconfirm this on an annual basis, by way of the Central Bank filing.

### b) Legal counsel

Irish legal counsel is required to be appointed. They will act as the main point of contact with the Central Bank in respect of the authorisation of the QIAIF.

### c) Auditor

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

### d) Secretary

An Irish secretary is required to be appointed, which would ordinarily also typically 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. Further information is available upon request.

### e) MLRO

A money laundering reporting officer (**MLRO**) is required to be appointed.

The MLRO need not be based in Ireland but must have requisite qualifications and sufficient experience in Irish anti-money laundering laws to undertake such a role. It is common for a third-party provider to be engaged as MLRO. Typically, this is an employee of the AIFM.

## What documents are required when setting up a QIAIF?

The following documents will be required when establishing a QIAIF in Ireland:

- Letter from the Fund/AIFM seeking authorisation,
- Prospectus / supplement(s),
- Certification of Incorporation/Registration Order and Memorandum & Articles /Instrument of Incorporation (for plc/ICAV),
- Material contracts (AIFM agreement, depositary agreement, administration agreement, investment management agreement, investment advisory agreement (if relevant),
- Trust Deed (for a Unit Trust,
- Deed of Constitution (for a CCF),
- Limited Partnership Agreement (for an ILP)

## What costs are involved when setting up a QIAIF?

### Central Bank fees

The Central Bank sets an annual fee – there is a minimum levy of €7,165) although the final amount payable depends on a number of factors, including how many sub-funds a QIAIF has.

Currently, the contribution per sub-fund is €475.

There is a maximum contribution for umbrella funds of €16,665 (i.e. the minimum levy of €7,165 plus 20 x €475).

There is an additional Supervisory Levy of €5000 for standalone fund and Umbrella funds, made up of €3,000 plus a contribution per sub-fund of €2,000.

### Other fees

In addition, a number of other fees will be payable to third party service providers, including the annual audit fee, the cost of the annual and semi-annual reports, printing costs etc.

Please speak to us if you would like to discuss these in greater detail.

## Illustrative timeline for setting up a QIAIF

The Central Bank will use a fast-track process to issue authorisation within 24 hours of submitting QIAIF documentation. But this depends on obtaining all prior approvals for service providers. Therefore, it normally takes around 4 to 5 months to launch a QIAIF from start to finish:

- Completion of new fund questionnaire;
- Confirmation of legal structure;
- Confirmation of service providers;
- Establishing the chosen legal structure of the QIAIF;
- If required, obtaining prior approval of the entities providing services, such as AIFM, investment manager, directors.
- Offering documents drafted by legal counsel and agreed between stakeholders;
- Negotiation and finalisation of material contracts;
- Pre-submission to the Central Bank (if Irish property fund or seeking digital asset exposure);
- All necessary Central Bank application forms and ancillary documents prepared by legal counsel;
- Launch board meeting;

## Illustrative timeline for setting up a QIAIF (continued)

- Legal counsel files completed QIAIF authorisation application with the Central Bank prior to 5 pm on the business day immediately prior to the intended authorisation 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 day;
- Launch can take place the following business day although frequently there is a period of capital raising prior to actual launch of the QIAIF; and
- The Central Bank issues director approval letters confirming approval to act as a director of the Fund. This is usually received within 1-2 business day of the Fund being authorised.



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