



Matheson

Establishing a
Qualifying Investor AIF in Ireland

About Matheson

Matheson's primary focus is serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Our clients include the majority of the Fortune 100 companies. We also advise 7 of the top 10 global technology brands and over half of the world's 50 largest banks. We are headquartered in Dublin and have offices in Cork, London, New York, Palo Alto and San Francisco. More than 775 people work across our six offices, including 105 partners and tax principals and over 530 legal, tax and digital services professionals.

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

The Asset Management and Investment Funds Department

Matheson is the number one ranked funds law practice in Ireland, acting for 31% of Irish domiciled investment funds by assets under management as at 30 June 2021. Led by 12 partners, the practice comprises 70 asset management and investment fund lawyers and professionals in total. The department's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by the European Legal 500, Chambers Europe and the IFLR1000, and the team is specifically recognised for its abilities with respect to complex mandates.

We are consistently involved in influencing developments in the asset management and investment funds industry in Ireland and Europe. Our partners and associates hold key industry appointments on various committees and taskforces of the Irish funds industry association (Irish Funds). At European level, a Matheson partner sits on the ESG Standing Committee, the UCITS working group and the ETFs working group of the European Fund and Asset Management Association.

With our asset management legal and regulatory advisers working alongside Matheson taxation, finance and capital markets and commercial litigation departments, we offer a comprehensive service for clients. We are one of the few law firms in Ireland with a specialist derivatives practice, which enables us to provide combined asset management, tax and derivatives advice of the highest calibre to our clients.

Establishing a Qualifying Investor Fund in Ireland

The purpose of this brochure is to provide an overview of qualifying investor alternative investment funds ("QIAIFs") and the key steps in establishing a QIAIF in Ireland.

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1 Overview of a QIAIF

1.1 Introduction

The qualifying investor alternative investment fund (“**QIAIF**”) has been one of the most successful fund structures in Ireland to date, its success reflecting the market appetite for a sophisticated regulated product facilitating hedge fund and other alternative investment strategies. According to figures released by the Central Bank of Ireland (the “**Central Bank**”) in April 2022, the number of QIAIFs had reached an all-time high of 3,031 funds and assets had reached €894 billion – increasing 19% since the end of 2020.

The QIAIF is a well-established, regulated investment fund vehicle, which has the characteristics and flexibility of typical hedge fund products, while authorised and regulated by the Central Bank. QIAIFs benefit from a fast-track authorisation process meaning that a QIAIF can be authorised by the Central Bank within 24 hours of filing the appropriate documentation. It should be noted that QIAIFs investing in Irish property and most QIAIFs investing in cryptoassets may not avail of the fast-track procedure and must make a pre-submission to the Central Bank, as further detailed in section 1.6 below.

The QIAIF is one of the two regulated alternative investment fund structures introduced upon the implementation of the Alternative Investment Fund Managers Directive (“**AIFMD**”) in Ireland¹. Establishing an Irish QIAIF is an efficient route to AIFMD compliance for both European Union (“**EU**”) and non-EU alternative investment funds managers.

The purpose of this briefing note is to summarise the key features of a QIAIF. For further information on any aspect of this note, please contact a member of the Asset Management and Investment Funds Department at Matheson, at the contact details set out at the end of this publication.

1.2 The Alternative Investment Fund Managers Directive

QIAIFs are indirectly regulated by the AIFMD, which imposes obligations at the level of the alternative investment fund manager (“**AIFM**”) that impact at the level of the AIF. The AIFMD came into effect on 22 July 2013, imposing harmonised conditions and requirements on the structure and operation of AIFMs, in return for which authorised AIFMs are permitted to avail of a passport to market alternative investment funds (“**AIFs**”) to professional investors across the EU and to manage AIFs domiciled in member states other than the AIFM’s home member state².

The AIFMD requires that each AIF must have an AIFM. The AIFM may be an EU or non-EU entity; however non-EU AIFMs will not be able to avail of the AIFMD marketing passport unless and until the European Commission decides to adopt legislation extending the AIFMD passport to non-EU AIFMs. The AIFMD imposes a number of obligations on an authorised AIFM, including detailed organisational requirements, minimum capital requirements and requirements concerning remuneration policies and practices. The AIFM must ensure that each AIF appoints a depositary, which will be subject to the depositary regime set out in the AIFMD, including strict liability in the event of a loss of financial instruments held in custody. The

¹ The second fund type is the retail alternative investment fund or “**RIAIF**”.

² While the AIFMD marketing passport is currently only available with respect to marketing to professional investors, the European Commission is currently considering whether this could be extended to retail investors as part of its overall review of the AIFMD.

AIFMD also contains detailed provisions as to the conditions that will apply when an AIFM delegates any of its functions.

For more information on the AIFMD, please see our dedicated AIF updates and briefing notes on our publications [webpage](#).

1.3 Approval of the AIFM

A QIAIF is, pursuant to the AIFMD, required to appoint an AIFM. The AIFM will need to be approved by the Central Bank in advance of the QIAIF application for authorisation. Further information on the authorisation of an AIFM is set out in Section 4 below.

1.4 Solutions for non-EU AIFMs

Although non-EU AIFMs will not be able to avail of the AIFMD marketing passport until a decision is made by the European Commission as to whether to extend the passport, a non-EU manager may establish a QIAIF and appoint a third party AIFM. Matheson can advise you in relation to examining your business needs to assess the various options available in relation to AIFM set-up, including stand-alone AIFM, third party AIFM or platform options.

1.5 Who May Invest in a QIAIF?

An investor in a QIAIF must make a minimum subscription of €100,000, or its equivalent in other currencies.

The following are the categories of qualifying investor that may invest in a QIAIF:

- an investor who is a professional client under the Markets in Financial Instruments Directive (“**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 scheme; or
- an investor who certifies that they are an informed investor by confirming that: (a) they have 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 (b) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIAIF.

Certain investors are exempt from the above criteria and the minimum subscription requirement, including the management company (where applicable) or general partner of an investment limited partnership; a company appointed to provide investment management or advisory services to the QIAIF; and a director or employee of the management company, general partner or company appointed to provide investment management or advisory services.

1.6 Speed to Market - Authorisation in a Day

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

Under the QIAIF fast-track procedure, the Central Bank does not engage in a detailed prior review of any of the key fund documents but instead relies on confirmations provided by the directors / AIFM and legal advisers of the QIAIF to ensure compliance with applicable Irish regulations. Compliance by the key fund

documents is also demonstrated by the completion of application forms that must be submitted with each new fund application. This procedure represents an extension of developments in the regulatory environment over the last few years, which has seen the Central Bank step back from the detailed prior review of many ancillary fund documents (circulars to investors, investment management agreements, administration agreements, prime broker agreements, depositary and sub-custody agreements and paying agent agreements) by placing reliance on completed application forms and written confirmations provided by the legal advisers and other service providers to a fund. The Central Bank does undertake post-authorisation spot checks on applications, and if a QIAIF is not in compliance with the Central Bank's requirements, difficulties may be experienced by the applicant should it wish to avail of the fast-track authorisation regime for further QIAIF launches.

Where a proposed QIAIF intends to hold Irish property or cryptoassets (except where the QIAIF proposes to invest no more than 10% of its NAV in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange), authorisation in one day will not be possible, as it will be necessary to file a pre-submission with the Central Bank. The purpose of the pre-submission is to provide the Central Bank with an overview of the proposed QIAIF, as well as its proposed liquidity, and, in the case of cryptoassets, how such assets are risk managed and safe kept.

Further information on the authorisation procedure is set out in Section 4 [below](#).

2 Legal Forms of QIAIF

2.1 Introduction

The choice of an appropriate vehicle through which a QIAIF will be constituted will depend on a number of factors. There are several legal forms available for the establishment of a QIAIF in Ireland and a summary of the key features of these legal forms is set out below.

A QIAIF may be established through any one of the following legal structures:

- ICAV;
- investment company;
- investment limited partnership (“ILP”);
- unit trust; or
- common contractual fund (“CCF”).

Unit trusts and CCFs are required to appoint a management company (which may or may not be the designated AIFM).

We provide below an overview of QIAIFs established as ICAVs, ILPs or as unit trusts, as these are the most commonly used investment fund vehicles. Please see our Ireland as an *International Fund Domicile* brochure on our [website](#) for information on CCFs.

2.2 The ICAV

The ICAV sits alongside the public limited company (“plc”) structure, which was, prior to the introduction of the ICAV in 2015, the most successful and popular of the available Irish fund structures. The ICAV structure modernised and streamlined the investment company fund structure and was designed specifically with the needs of investment funds in mind.

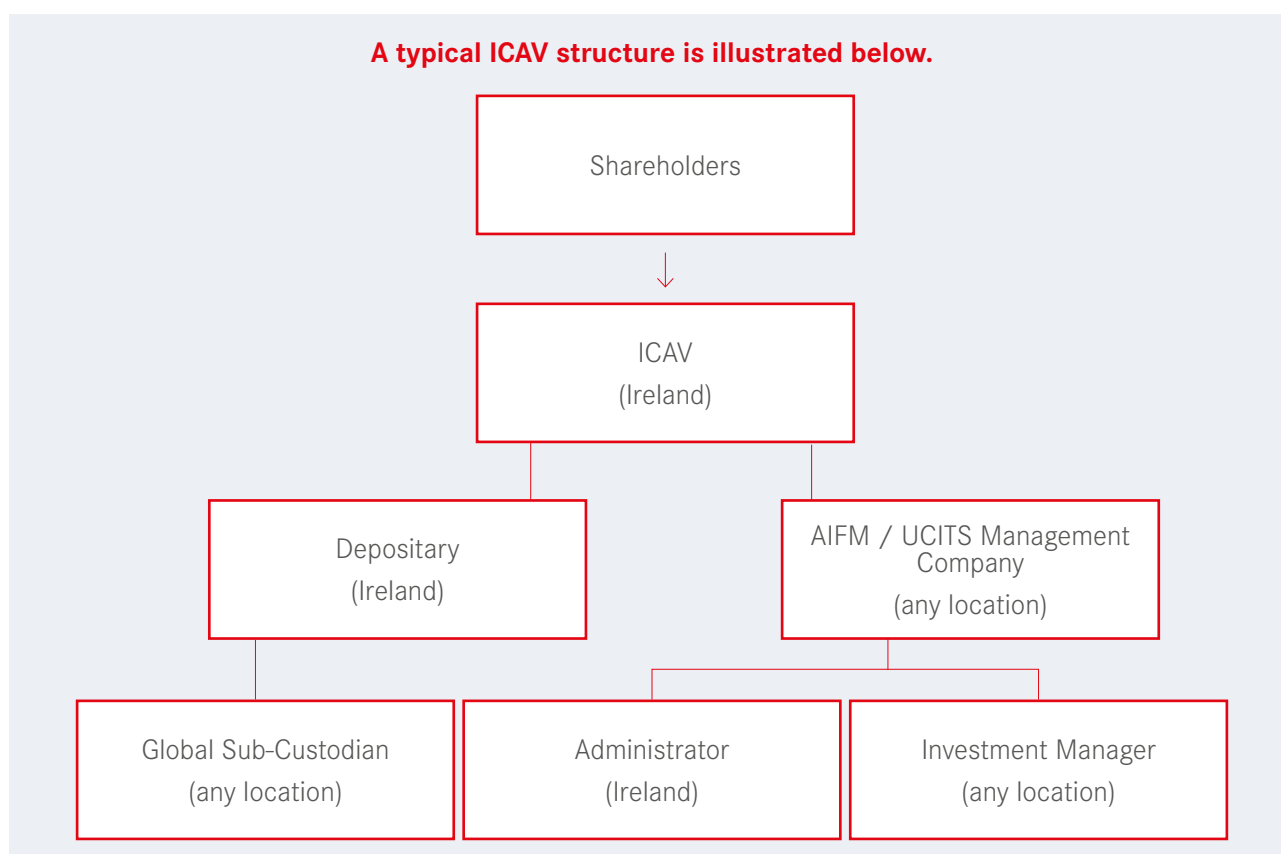
The ICAV is registered (incorporated) with the Central Bank and provides a tailor-made fund vehicle which is available as a corporate structure to both UCITS and AIFs. One of the advantages of the ICAV is that it is a corporate entity that can elect its classification under the US check-the-box taxation rules. The ICAV has its own legislative regime which assists in ensuring that the ICAV is distinguished from ordinary companies and therefore avoids those aspects of company law legislation that would not be relevant to a collective investment scheme.

The ICAV is governed by the Irish Collective Asset-management Vehicle Act 2015. The constitutional document of an ICAV is the instrument of incorporation. The ICAV is capable of being established as an umbrella structure with a number of sub-funds and share classes and may be listed on a stock exchange. Investors own shares in the ICAV and the ICAV is able to issue and redeem shares continually. An ICAV must have a board of directors to govern its affairs.

The ICAV offers a range of potential benefits that reduce costs and improve efficiencies. An ICAV is not required to spread risk, unlike an investment company, which facilitates a broader range of investment

strategies for an AIF established as an ICAV. An ICAV has the ability to dispense with the requirement to hold an annual general meeting, and it is permitted to prepare separate accounts at sub-fund level. In addition, prior investor approval for changes to an ICAV’s instrument of incorporation is not required once the ICAV’s depositary certifies that the changes do not prejudice investors’ interests and the Central Bank has not otherwise mandated that the change is of a type that must be approved by the members. Since its introduction, the ICAV has become the preferred legal structure for establishing collective investment fund vehicles in Ireland.

A typical ICAV structure is illustrated below.



2.3 Investment Limited Partnerships

Ireland now has a ‘best-in breed’ regulated partnership vehicle building on Ireland’s position as the domicile of choice for asset managers wishing to establish European investment funds. Recognising the demand among fund managers to utilise a regulated partnership vehicle in Ireland, in late 2020, a number of important enhancements were made to Ireland’s ILP vehicle. The enhancements to the ILP vehicle demonstrate Ireland’s commitment to the funds’ industry and ensuring that Ireland offers a suitable fund vehicle for ILPs when compared to other jurisdictions.

An AIF can be established as an ILP whereas a UCITS cannot be structured as an ILP.

ILPs can be established under the ILP Act for investment in property or securities of any kind with the authorisation of the Central Bank. An ILP is created by contract between the general partner(s) and one or more investors who participate as limited partner(s), and are subject to the AIF Rulebook. The ILP incorporates standard private equity and real asset fund features such as: closed-ended structures; excuse and exclude provisions; capital accounting; commitments, capital contributions and drawdowns; defaulting investor provisions; distribution waterfalls and carried interest; and advisory committees.

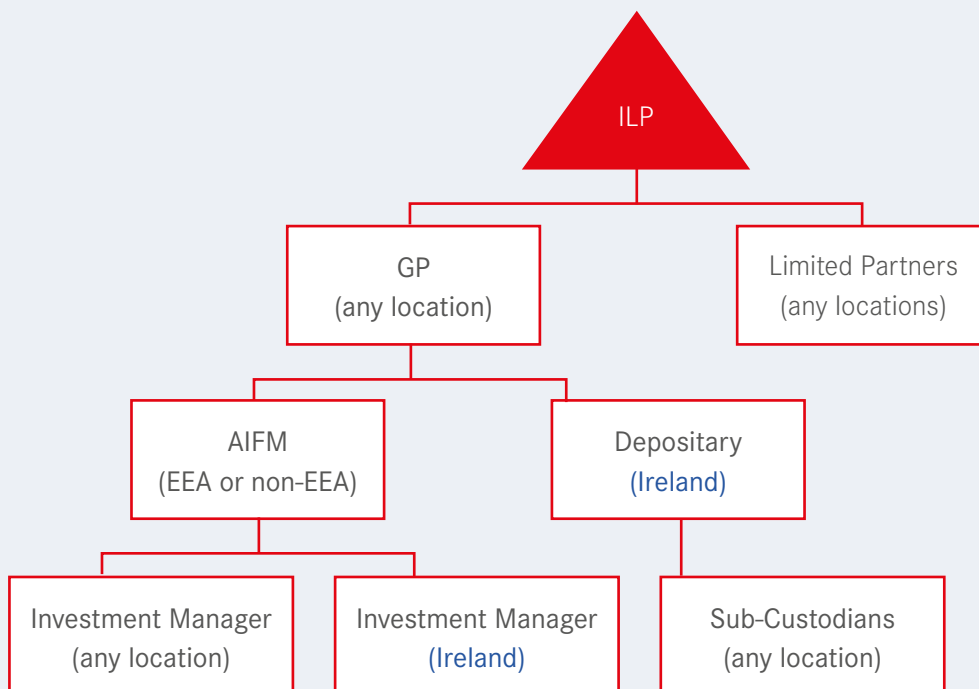
The ILP is not incorporated and is not a separate legal entity. An ILP does not therefore have power to enter contracts in its own name. The general partner usually enters into contracts for the account of the ILP. The general partner is typically an Irish corporate, but it does not have to be a corporate and it does not have to be domiciled in Ireland. The general partner of an ILP is responsible for the management of its business and is liable for the debts and obligations of the ILP. As with each of the investment fund vehicles referred to in this note, a depositary must be appointed to safe-keep the ILP’s assets. The ILP is tax transparent for Irish tax purposes.

There is no requirement under the ILP Act for an ILP to operate on the principle of risk spreading. ILPs can be dedicated investment vehicles or offered on a private placement or public basis. There is no limit on the number of limited partners permitted for an ILP.

The general partners of an ILP are responsible for the management of its business and are liable for the debts and obligations of the ILP. In general, a limited partner’s liability will not exceed the amount of its capital contribution or commitment to the ILP. However, a limited partner who participates in the conduct of the business of an ILP in its dealings with third parties may be liable on the insolvency of the ILP for debts incurred by the ILP in the period during which it participated in the conduct of its business, as if such limited partner had been a general partner during this period. A limited partner’s liability in this regard is limited to debts or obligations incurred by the ILP in favour of a third party who, at the time that the debt or obligation was incurred, reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner. The ILP Act specifies certain activities (the “white list”) which will not be deemed to constitute participation by a limited partner in the business of an ILP.

For more information on the ILP, see our “Establishing an Irish Investment Limited Partnership” briefing note on our [website](#).

A typical ILP structure is illustrated below.

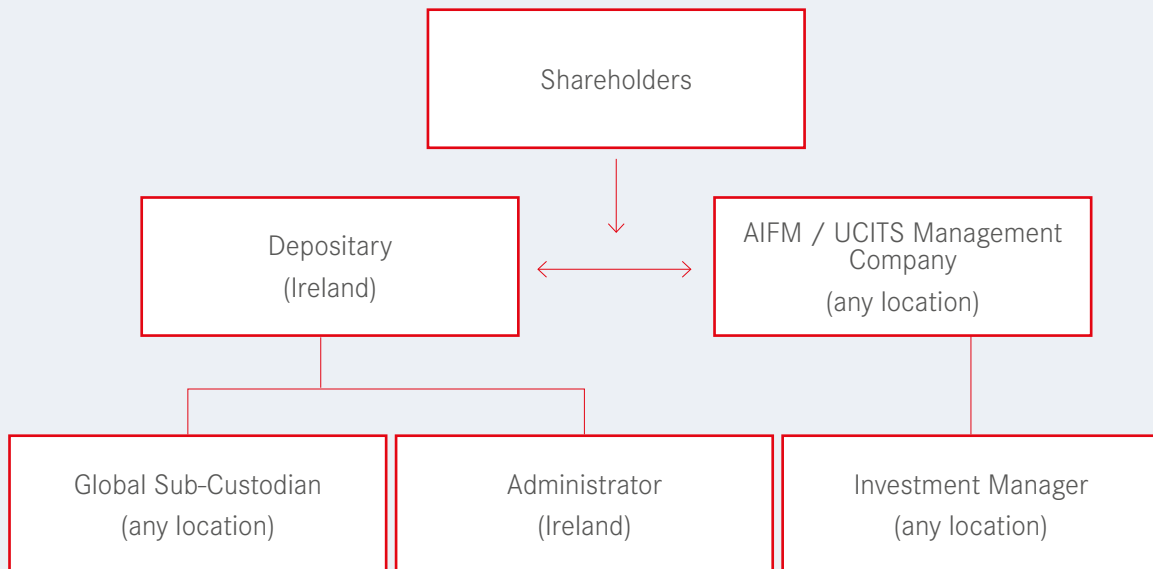


2.4 Unit Trust

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

Historically, the fact that there is no requirement for a QIAIF unit trust to operate on the principle of risk spreading was always seen as an advantage of the QIAIF unit trust when compared to a QIAIF formed as a plc investment company. As plc investment company structures have been largely superseded by the ICAV, and as the QIAIF ICAV is similarly not subject to any requirement to operate on the principle of risk spreading, this feature of the QIAIF unit trust is no longer unique to the unit trust. It should also be noted that references to the board of directors in the context of a unit trust are references to the board of directors of the manager of the unit trust. The constitutional document of the trust is the trust deed. Unit trusts are governed by the Unit Trusts Act 1990.

A typical unit trust structure is illustrated below:



3 Key Features of a QIAIF

3.1 Permitted Investments and Leverage

The rules applicable to a QIAIF are set out in the relevant investment funds legislation and in the Central Bank's AIF Rulebook. The minimal investment restrictions imposed on a QIAIF mean that QIAIFs can have sophisticated investment strategies. Accordingly, QIAIFs can invest in instruments traded on and off exchanges, multiple instruments issued by the same issuer, deposits with credit institutions, other collective investment schemes and can enter into short selling, borrowing or dealing facilities. However, certain disclosures must be made in the fund prospectus depending on the likely investment strategies of the fund.

Diversification Requirements

Irish company law requires that investment companies operate on the basis of risk spreading. As mentioned above, there is no corresponding requirement in the context of ICAVs, ILPs, CCFs or unit trusts.

Distribution Requirements

The Central Bank does not require funds to distribute income and accordingly funds can be established either as distributing funds or accumulating funds. Where a fund distributes income, it is free to determine how it will do this but must disclose this in the prospectus.

Asset Types

As a QIAIF, there are no restrictions on the types of assets in which the fund can invest.

Leverage

As mentioned, there are no restrictions on leverage. AIFMs are required to set a maximum level of leverage which they may employ on behalf of each QIAIF they manage.

Publication of Issue and Redemption Prices

The Central Bank does not require QIAIFs to make public the issue and redemption prices of their units, however, these must be made available to unitholders on request.

3.2 Loan Originating QIAIFs

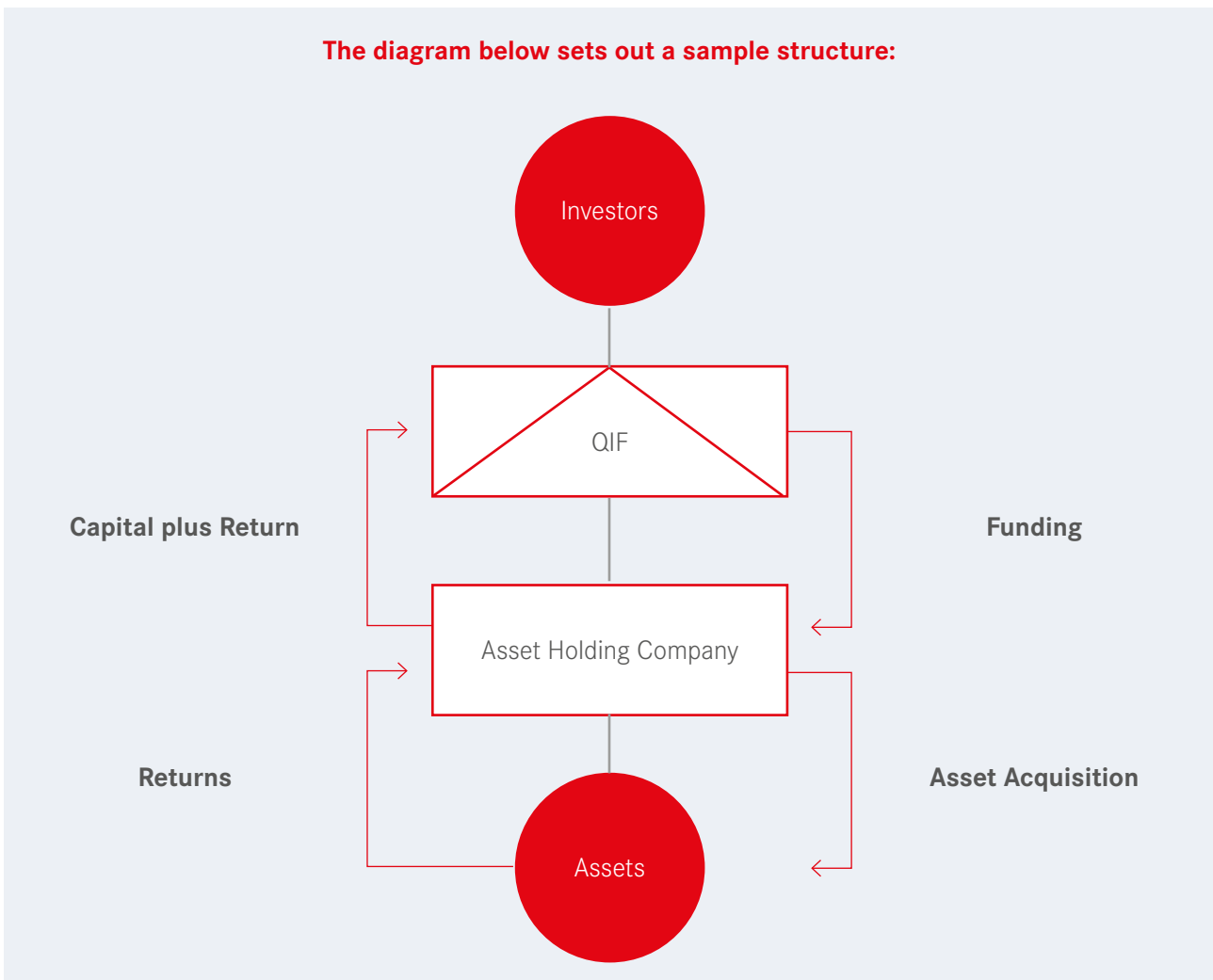
Ireland was the first EU member state to introduce a specific regulatory framework for loan originating investment funds. Matheson advised on the establishment of one of the first loan originating qualifying alternative investment funds (“**L-QIAIFs**”) in Ireland. Following the conclusion of a public consultation process, in 2014 the Central Bank published its requirements for L-QIAIFs in its AIF Rulebook, allowing L-QIAIFs with an authorised AIFM to be authorised by the Central Bank and marketed throughout the EU pursuant to the AIFMD.

The Central Bank's AIF Rulebook sets out a number of requirements applicable to L-QIAIFs over and above the general requirements imposed on all L-QIAIFs. These include the requirement to be closed-ended, restrictions on the permitted activities of L-QIAIFs and eligible borrowers, diversification requirements and leverage limits. Further details are available in our “Irish Loan Originating Investment Funds” briefing note on our [website](#).

3.3 Irish Asset Holding Companies

A QIAIF can execute its investment strategy by holding investments in subsidiary asset holding companies. An asset holding company can be beneficial when introducing leverage into fund structures (eg, to provide lender security), to manage general legal risk (further ring-fencing in umbrella structures) and may also support more efficient claims under double tax treaties in respect of the assets they hold. It is generally possible for QIAIFs to establish asset holding companies in Ireland without incurring incremental Irish tax in respect of the income or gains arising from the assets they hold.

The diagram below sets out a sample structure:



Such an asset holding company is subject to certain conditions laid down by the Central Bank. The principal conditions are that: (i) the subsidiary must be wholly owned by the QIAIF; (ii) the directors of the fund must form a majority of the board of directors of the subsidiary and they must maintain full control over the activities of the subsidiary; (iii) the shares of the subsidiary must be held by the fund’s depository on behalf of the fund; and (iv) the fund’s administrator must confirm that it will value the underlying assets of the subsidiary in accordance with the Central Bank’s requirements. In addition, the prospectus or any supplement of the fund must disclose the name of the subsidiary and the fact that the subsidiary is owned by the fund. The subsidiary’s constitutional documents must also include certain required provisions.

4 Overview of Authorisation Process

4.1 Approval of the Central Bank

The Central Bank is the regulatory authority responsible for the authorisation and supervision of investment funds established in Ireland, and for fund administration companies, trustees and depositaries located in Ireland providing services to Irish and / or non-Irish domiciled funds.

4.2 AIFM

As noted above, a QIAIF will need to designate an AIFM that will need to be approved by the Central Bank in advance of the QIAIF application for authorisation. AIFMs are regulated under the AIFMD and the AIF Rulebook of the Central Bank. An AIFM may be fully authorised under the AIFMD or “registered”. Authorised AIFMs are subject to the full requirements of the AIFMD and are permitted to: (i) use the AIFM passport; and (ii) market the AIFs they manage throughout the EU using the AIFMD marketing passport. Registered AIFMs, on the other hand, are only subject to some of the AIFMD requirements relating to reporting to regulators but are not permitted to use either the AIFM passport or the passport for marketing AIFs. A QIAIF established with a registered AIFM has a two year start-up period following which an authorised AIFM must be appointed. Where an AIFM manages assets of greater than €100 million - or €500 million in the case of closed-ended, unleveraged AIFs - it must apply for authorisation as an AIFM (an “above-threshold AIFM”).

QIAIFs may also designate a non-EU AIFM. Non-EU AIFMs are at present not capable of becoming authorised under the AIFMD. Accordingly, they cannot use the AIFM passport or market the AIFs they manage using the AIF passport (although they can market subject to the national private placement regimes in operation in each member state). Non-EU AIFMs may be permitted to apply for authorisation under the AIFMD, thereby availing of the AIFM passport and marketing passport, if the European Commission legislates to extend the passport to non-EU AIFMs and non-EU AIFs.

At the core of any application to be authorised as an AIFM is the requirement for a programme of activity. This is essentially a governance document or a regulatory compliance plan, setting out how the AIFM will be run on a day-to-day basis and how it intends to comply with the Central Bank’s requirements in relation to certain key managerial functions, including in particular portfolio management and risk management. The programme of activity also describes in summary the various policies and procedures the AIFM has in place to address various requirements, for example the conflicts of interest policy or the anti-money laundering policy.

The Central Bank requires that all AIFMs have a minimum of three suitably qualified and appropriately senior full-time equivalent employees. In addition, half of the managerial functions must be performed by at least two designated persons resident in the EEA. The Central Bank has published detailed guidance for fund management companies, including AIFMs, on delegate oversight, the organisational effectiveness role, directors’ time commitments, managerial functions, operational issues and procedural matters.

Minimum Capital

AIFMs must have a minimum level of financial resources equivalent to one quarter of its preceding year's total expenditure (as set out in its most recent audited accounts) or €125,000 plus an "additional amount", whichever is greater. The additional amount of capital shall be equal to 0.02% of the amount by which the net asset value of the funds under management exceeds €250,000,000. The required total of the €125,000 and the additional amount shall not, however, exceed €10,000,000.

AIFM Authorisation

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

Where an above-threshold EU AIFM is designated, an application for authorisation as an AIFM must be made by submitting:

- (a) a completed application form signed by two directors of the applicant AIFM;
- (b) completed individual questionnaires in respect of:
 - each director and senior manager; and
 - each individual who has a direct or indirect holding of shares or other interest in the proposed AIFM, which represents 10% or more of the capital or voting rights in the AIFM, and any other individual who is in a position to exercise a significant influence over the management of the AIFM;
- (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under AIFMD;
- (d) information on the remuneration policies and practices of the AIFM;
- (e) information on arrangements made for the delegation and sub-delegation to third parties; and
- (f) a statement of responsibility.

4.3 Approval of Directors

The board of directors of Irish domiciled funds established as ICAVs or investment companies must include at least two Irish resident directors. The same requirement applies to management companies of Irish domiciled funds and general partners of ILPs (where the general partner is a corporate based in Ireland).

All directors of Irish domiciled ICAVs or investment companies, and directors of any company acting as a "manager" of an Irish fund or as a general partner of an ILP (again, where the general partner is a corporate based in Ireland), must be pre-approved by the Central Bank as part of its Fitness and Probity Regime. Sufficient information in respect of all directors must be submitted to the Central Bank by the directors themselves via the Central Bank's on-line reporting system ("ORS"). Directors, whether previously approved or not, are required to complete an individual questionnaire ("IQ") online on a Central Bank website dedicated to each structure.

The Central Bank does not prescribe the experience and expertise required of each director, however, the fitness and probity standards require that a director must:

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

The IQ includes a pre-formatted curriculum vitae section within the IQ form itself covering all appointments and positions held. The applicant is also required to disclose information in relation to personal details, qualifications and experience, other business interests, and any shareholdings held by them in the proposing entity. The applicant must also give the names of two referees (generally, the applicant's two most recent employers) who are familiar with the applicant's financial services activities who can be contacted by the Central Bank to verify information contained within the IQ.

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

4.4 Approval of the Investment Manager

The Central Bank must be satisfied with the experience, expertise, reputation and resources of the investment manager(s) responsible for investing the assets of the QIAIF.

An investment manager is the entity with discretionary authority to invest and manage the assets of the fund pursuant to the investment objective and policy of the fund, as described in the fund's prospectus. Where the AIFM will also act as investment manager, there is no need for a separate investment manager application process; this is included as part of the AIFM approval process.

In determining the suitability for approval, the Central Bank relies on an attestation letter provided by the AIFM confirming the due diligence it has performed on the investment manager (including, at a minimum, regulatory status, background, financial information, share capital, contingent liabilities, adequacy of resources and ability of the AIFM to monitor the investment manager). In addition, a detailed application form must be completed and filed with the Central Bank together with the attestation, prior to the filing of any fund documentation. This application form requires applicants to provide the Central Bank with the following information:

- type of investment fund it intends to establish, promote or manage;
- applicant's ownership structure and regulatory status as well as the regulatory status of any other group companies;
- applicant's activities, countries of operation, relevant experience, track record and the value of assets which the applicant has under discretionary management;
- curriculum vitae for the directors or relevant senior managers of the applicant;
- details of the applicant's reporting structure and information in relation to the personnel to be involved in portfolio management on behalf of the fund; and
- identity of the proposed administrator and depositary of the investment fund; and
- details of the distribution plans for the investment fund.

In addition to filing a signed application form, applicants are required to provide the Central Bank with the following documentation:

- a chart detailing the applicant's group structure; and
- latest audited accounts of the applicant and its parent company (the Central Bank would generally expect an investment manager to have capital of €635,000).

It may be possible for the applicant to avail of a fast-track approval process where it holds an authorisation under MiFID implementing legislation in a member state of the European Economic Area or is a credit institution regulated within the European Economic Area and can provide the necessary information as required by the Central Bank's fast-track checklist together with an up to date confirmation of regulatory

status. Fast-track approvals are generally cleared within 2 – 3 business days, and the AIFM attestation referred to above is not required. In other cases, the approval process generally takes approximately one to two weeks (the timing depends significantly on the completeness of the attestation and the speed which with responses to the Central Bank’s queries are provided).

4.5 Selection of Depositary and Administrator

QIAIFs must appoint a Central Bank-approved depositary for the safe-keeping of their assets and a Central Bank-approved administrator which is responsible for maintaining the books and records of the fund, calculating the net asset value of the fund and maintaining the shareholder or unitholder register. All of the world’s leading depositaries and administrators are Central Bank-approved and have a presence in Ireland.

No single company may act as both management company, administrator or general partner on the one hand and depositary on the other, although affiliated companies of the same group may and regularly do perform these functions independently.

Depositary’s Duties

The depositary of a QIAIF must comply with the depositary regime set out in the AIFMD and is responsible not only for the safe-keeping of the assets of the QIAIF and the settlement of trades, but also has oversight duties which require it to supervise the investment activities of the fund and to report to the shareholders or unitholders on an annual basis as to whether the fund has operated in accordance with its prospectus and the applicable regulations.

In February 2021, the Central Bank established a framework for the authorisation of QIAIF depositaries for assets other than financial instruments (“**DAoFI**”). The Central Bank expects a QIAIF in respect of which a DAoFI is appointed to materially invest in illiquid assets and for these assets to be physical assets which do not qualify as financial instruments under AIFMD or could not be physically delivered to the depositary. DAoFI’s can safe-keep a large range of assets including real estate, ships, commodities, intellectual property and income therefrom, art and wine. DAoFIs can only be appointed to QIAIFs which have no redemption rights exercisable for at least five years from the date of the initial investment and which generally do not invest in financial instruments that can be held in custody. The Central Bank approval process for DAoFIs is more straightforward than the approval process for regular depositaries given the limited range of assets that can be safe-kept by DAoFIs.

Administrator’s Duties

The Central Bank has set out requirements governing the outsourcing of administrative services. Some of the key points regarding the outsourcing rules include the following: (i) core management functions (which include setting the risk strategy and risk policy of the administrator) and maintenance of the shareholder register cannot be outsourced; (ii) outsourcing must not affect the administrator’s full and unrestricted responsibilities under fund legislation and the Central Bank’s requirements; (iii) administrators must put in place a policy that covers all aspects of outsourcing; (iv) the outsourcing service provider must have the ability, capacity and any necessary regulatory approvals to perform the outsourced functions reliably and professionally; and (v) the outsourcing relationships must be fully documented by a formal contract or service level agreement between the parties which must contain certain mandatory provisions.

4.6 QIAIF Authorisation and Documentation

As noted above in section 1, the approval procedure for QIAIFs is a streamlined one day process. Authorisation can be granted on the day following the date of filing of appropriate QIAIF documentation, once the Central Bank receives a completed application by 3.00 pm on the filing date (or 5.00 pm where

ORION, the Central Bank's online filing system is used) and the fund certifies that it complies with certain agreed parameters codified in the Central Bank's QIAIF application form. If all is in order, the Central Bank will issue its letter of authorisation on the following day.

It should be noted that, if it is the case that the QIAIF proposes to seek derogations from the general policies applicable to QIAIFs or should the QIAIF wish to utilise novel or other unusual features, the Central Bank expects that the applicant discuss these proposals in advance of submission of the authorisation application.

A list of documents to be prepared is set out at (i) to (xiii) below, which Matheson can prepare in conjunction with the relevant service providers while the Central Bank is reviewing the AIFM approval application and any director IQs. The parties responsible for production of draft documents are indicated in parenthesis below:

- (i) Central Bank application forms for the fund (Matheson);
- (ii) directors' letter of application for authorisation of the fund (Matheson);
- (iii) fund prospectus (and supplements as appropriate) (Matheson);
- (iv) certificate of incorporation for the fund where the QIAIF is established as an investment company, or registration certificate where the QIAIF is established as an ICAV (not required for unit trust) (Matheson);
- (v) instrument of incorporation where the QIAIF is established as an ICAV or memorandum and articles of association of the fund where the QIAIF is established as a company (Matheson) - or trust deed where the QIAIF is established as a unit trust or deed of constitution where the QIAIF is established as a CCF (Matheson; Trustee/Depositary);
- (vi) management agreement (Matheson);
- (vii) AIFM agreement (Matheson);
- (viii) investment management agreement (AIFM; Matheson);
- (ix) administration agreement (Administrator / Matheson);
- (x) depositary agreement between the fund and the Depositary where the QIAIF is established as an ICAV, investment company or CCF (not required if QIAIF is a unit trust) (Depositary; Matheson);
- (xi) prime brokerage agreement and sub-depositary agreement (where relevant) (Prime Broker, Depositary, Matheson);
- (xii) letter of confirmation the fund is not a money market fund; and
- (xiii) confirmation from applicant that the prospectus, the instrument of incorporation / memorandum and articles of association / trust deed and the material contracts are in compliance with the Central Bank's AIF Rulebook (Matheson).

Board Approval

A meeting of the fund's directors in the case of an ICAV or investment company and the directors of the manager in the case of a unit trust or CCF will need to be convened to review the draft documentation. The board of directors of the ICAV / investment company or the board of directors of the manager of the trust will formally appoint the various service providers to the fund and will approve the draft documentation. The board will also formally deal with certain Irish company law matters where the QIAIF is established as an investment company (see more on the investment company incorporation below).

Once approved by the board, the various agreements can be executed and final documentation can be filed with the Central Bank for approval using the fast-track authorisation process referred to above.

Registration of an ICAV

The registration of an ICAV with the Central Bank precedes the application for authorisation as a QIAIF and is a relatively straightforward process. The Central Bank will issue a registration order for a new ICAV within two weeks from the date of receipt of the application for registration. Matheson can prepare the necessary forms for this registration.

Incorporation of an Investment Company

Where the QIAIF is established as an investment company, Matheson can arrange for the incorporation of the investment company. Our company secretarial department can deal with the necessary filings with the Companies Registration Office (“**CRO**”) in this regard. This will take place at the outset of the project. As stated above, a board meeting will then be held towards the end of the project to approve the various documents and any changes to the board. A list of directors’ directorships and partnerships over the past ten years (whether paid or unpaid) needs to be filed with the CRO.

Incorporation of an Asset Holding Company

An asset holding company can be established as a “Designated Activity Company” and Matheson’s company secretarial department can deal with the necessary filings with the CRO in this regard. As with corporate funds, a board meeting of the DAC will then be held towards the end of the project to approve the various documents and any changes to the board. As with the incorporation of a fund, a list of directors’ directorships and partnerships over the past ten years (whether paid or unpaid) needs to be filed with the CRO.

5 Taxation of Irish Domiciled Funds

5.1 Taxation of Funds

Irish domiciled funds are exempt from Irish tax on income and gains derived from their investment portfolios and are not subject to any Irish tax on their net asset value. Irish residents may invest in an Irish domiciled fund without affecting the tax-exempt nature of the fund. Individuals may not invest in a CCF (investment is limited in Irish tax legislation to institutional investors and companies only).

5.2 Taxation of Investors

Investors who are not Irish tax resident may receive distributions from Irish domiciled funds without the deduction of any Irish withholding tax. Similarly, redemptions and transfers of units by such investors may take place without the imposition of any Irish tax. Funds must normally obtain declarations from investors confirming their non-resident status. These declarations can be incorporated in the fund's standard application form. However, where funds are not marketed to Irish investors and certain approved measures are put in place, investor declarations are not required. ILPs and CCFs are not required to obtain investor declarations (due to their tax transparent nature). Irish reverse hybrid rules need to be considered in the context of ILPs and CCFs.

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

5.3 Treaty Access

The Irish tax authorities consider that Irish domiciled funds (other than ILPs and CCFs) are generally entitled to the benefits of Ireland's extensive and expanding tax treaty network. However, the availability of treaty benefits in any particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country. Consequently, treaty access needs to be reviewed on a case-by-case basis.

Because ILPs and CCFs are tax transparent under Irish law, the Irish tax authorities do not view them as capable of benefitting from the Irish tax treaty network. As a result, the relevant tax treaty is likely to be between the source country (where the ILP's / CCF's investments are located) and the unitholder's or partnership interest holder's country. It is generally advisable to obtain a specific tax ruling from the source country prior to making any investment where treaty benefits will be sought.

5.4 VAT and Transfer Taxes

The provision of management and administration services to an Irish domiciled fund is exempt from Irish VAT. However, other services (such as custody, legal and accounting services) can result in an Irish VAT liability for Irish domiciled funds. Irish funds may not recover such VAT unless, in some circumstances, the nature of the fund's assets and the location of the assets permit recovery.

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

6 Euronext Dublin Listing

Euronext acquired the Irish Stock Exchange (“ISE”) in March 2018. The ISE, now known as Euronext Dublin, is an internationally recognised, regulated exchange for the listing of Irish and non-Irish domiciled investment funds and it is widely regarded as one of the leading exchanges in the world for the listing of investment funds. A stock exchange listing on a recognised exchange in an OECD jurisdiction, such as Euronext Dublin, can be particularly important for the profile of a fund, attracting certain categories of institutional investors or investors in certain jurisdictions who are prohibited or restricted from investing in unquoted securities.

In addition to the recognised regulatory status of Euronext Dublin, other factors such as speed and efficiency of listing, and comparative cost effectiveness, have contributed to the development of Ireland as a premier international centre for the listing of investment funds domiciled in Ireland and elsewhere. The listing process can be completed contemporaneously with the Central Bank’s authorisation process. The Global Exchange Market or GEM is an exchange regulated multilateral trading facility for investment funds listed on Euronext Dublin. Investment funds can choose to list on either the regulated market of Euronext Dublin or the GEM. Investment funds listed on GEM will not be subject to the Prospectus Regulation, the Transparency Directive or the Statutory Audit Directive.

The listing process can normally be completed within four weeks of submission of relevant documents and, in the case of Irish domiciled funds, it can be completed contemporaneously with the Central Bank’s authorisation process. The listing of a closed-ended fund can take longer.

Euronext Dublin is prepared to list Irish and non-Irish domiciled open ended and closed ended funds, whether constituted as ICAVs, investment companies, ILPs, unit trusts or CCFs.

Umbrella funds may be listed, through the approval by Euronext Dublin of the umbrella and the shares in each sub-fund, or each class of shares within each sub-fund, as the case may be, can be listed as required. The Euronext Dublin Investment Fund Listing Rules require that listing particulars or an equivalent offering document be prepared for the purposes of listing. The listing requirements for Irish domiciled funds which are authorised by the Central Bank have been substantially streamlined and, in the case of QIAIFs, many of the listing requirements are dis-applied.

The prospectus will be used as the listing particulars for the purposes of Euronext Dublin and copies of the QIAIF documents discussed at 4.6 above will be filed with Euronext Dublin as necessary. In addition, further documents need to be filed with Euronext Dublin on the day prior to the listing, which will take place after the authorisation of the fund by the Central Bank.

Matheson offers the full range of Euronext Dublin listing services, including investment funds and debt securities listing. As a full service law firm, Matheson offers clients the convenience of having their legal and listing requirements dealt with seamlessly within one firm. We act as a listing sponsor and listing agent to facilitate the listing of both Irish and international funds and debt securities on Euronext Dublin by providing:

- listing sponsor and agent services for investment funds and debt securities;
- guidance on all stages of the listing process from initial review to final listing; and
- guidance on the on-going obligations of Euronext Dublin.

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Matheson

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