



Matheson

## Establishing a UCITS in Ireland

UCITS Law Firm of the Year, The Hedge Fund Journal 2017

Number One Ranked Irish Funds Law Practice acting for 29% of Irish Domiciled  
Investment Funds by AUM, Monterey Insight Ireland Fund Survey 2016

Matheson is ranked in the FT50 most innovative law firms in Europe, Financial Times 2016

Most Innovative Law Firm in Europe, Global Funds Awards 2016

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## About Matheson

Headquartered in Dublin with offices in London, New York, Palo Alto and San Francisco, more than 650 people work across Matheson's five offices, including 80 partners and tax principals and over 350 legal and tax professionals. Matheson concentrates on serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Matheson's clients include the majority of the Fortune 100 companies and over half of the world's 50 largest banks. Matheson has worked closely with some of the world's largest tech multinationals and high-profile start-ups advising 7 of the top 10 global technology brands.

Our strength in depth is spread across more than 37 distinct practice areas within the firm, including asset management and investment funds, aviation and asset finance, banking and financial services, commercial litigation and dispute resolution, corporate, healthcare, insolvency and corporate restructuring, insurance, technology and innovation, intellectual property, international business, structured finance and tax. This broad spread of expertise and legal know-how allows us to provide best-in-class advice to clients on all facets of the law.

Our dedication to client service and excellence has become our hallmark as a firm, and is acknowledged by both our clients themselves and the world's leading legal directories and publications.

## The Asset Management and Investment Funds Group

Matheson is the number one ranked funds law practice in Ireland, acting for 29% of Irish domiciled investment funds by assets under management as at 30 June 2016. Led by 12 partners, the practice comprises 50 asset management and investment fund lawyers and professionals in total. The group's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by Chambers Europe, the European Legal 500 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). The head of our team, Tara Doyle, is an elected member and Vice-Chair of the governing Council of Irish Funds. We also hold an appointment to the Irish Prime Minister's International Financial Services Centre Funds Working Group and, at European level, a Matheson partner sits on both the UCITS working group and the Benchmarks working group of the European Fund and Asset Management Association.

We have been named UCITS Law Firm of the Year 2017 by The Hedge Fund Journal, the Best Alternative Investments Law Firm Europe 2016, named the Best Alternative Investments Law Firm Europe 2016 and Best AIFMD Law Firm in Europe 2015 and 2014 by Wealth & Finance International. We have also been awarded the Financial Services (International) ICAV Deal of the Year 2016 and Investment Funds Deal of the Year 2015 and 2014 by Finance Dublin. Matheson received the award of European Law Firm of the Year 2015 from the Hedge Fund Journal. This is the second time we have received this award, reflecting the international recognition of our contribution to the European hedge fund sector. We are the only Irish law firm ever to win the award of European Advisor of the Year from Funds Europe.

With our asset management legal and regulatory advisers working alongside Matheson taxation, banking, structured finance 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 UCITS in Ireland

This brochure summarises the key features of UCITS and provides an overview of the key steps in establishing a UCITS in Ireland.

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# 1 Overview of UCITS and Regulatory Framework

## 1.1 Introduction

As an internationally recognised gold standard for investment funds, the undertakings for collective investment in transferable securities (“**UCITS**”) brand has gone from strength to strength since its inception as a harmonised European investment fund more than twenty-five years ago.

The advantage of establishing a fund as a UCITS is that it can generally be sold without any material restriction to any category or number of investors in any EU member state, subject to the UCITS providing the necessary notification and the filing of appropriate documentation with its home state regulatory authority.

Ireland was one of the first member states of the EU to implement the first UCITS directive (Council Directive 85/611/EEC) and since then has become a leading domicile for the establishment of UCITS, with a reputation for efficiency, excellence of professional services and product expertise. UCITS account for approximately 60% of the net assets of Irish domiciled funds and Irish domiciled UCITS are sold in over 70 countries worldwide.

## 1.2 Regulatory Framework

UCITS are diversified, limited leverage, open ended investment funds whose object must be to invest capital raised from the public in transferable securities. UCITS are open ended insofar as investors must generally be entitled to redeem their shares or units on request at least once per fortnight. There are restrictions on the investment and borrowing policies of UCITS and on the use by UCITS of leverage and financial derivative instruments (“**FDI**”).

Since the first UCITS directive was adopted in 1985, the UCITS product has evolved over time and there has been a number of legislative developments, including broadening the range of eligible assets and simplifying the passporting process, amongst others. Directive 2009/65/EC (“**UCITS IV**”) repealed all earlier directives, with the exception of the Eligible Assets Directive (Directive 2007/16/EC). Further amendments to the UCITS regime, in the form of the UCITS V Directive (Directive 2014/91/EU) (“**UCITS V**”), came into effect on 18 March 2016. UCITS V introduced new depositary rules, rules on remuneration and administrative sanctions procedures which more closely align the UCITS regime in these areas with the Alternative Investment Fund Managers Directive (“**AIFMD**”).

The Central Bank of Ireland (the “Central Bank”) is the regulatory authority responsible for the authorisation and supervision of Irish fund vehicles, whether established as UCITS or alternative investment funds (“**AIFs**”), and it has worked closely with the Irish funds industry to accommodate a range of tax-exempt investment products using a variety of structures, outlined below. In addition to the Irish UCITS Regulations<sup>1</sup> implementing UCITS IV and UCITS V, the Central Bank has issued its own Central Bank UCITS Regulations<sup>2</sup> which came into effect on 1 November 2015 and which set out in greater detail the rules which apply to Irish domiciled UCITS, together with related guidance. Where a fund has listed one or more share classes, the Irish Stock Exchange (“**ISE**”) listing rules for investment funds also apply.



<sup>1</sup> European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 SI 352 of 2011

<sup>2</sup> Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 SI 420 of 2015

### 1.3 Legal Forms of UCITS

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

- an Irish Collective Asset-management Vehicle (“**ICAV**”);
- an investment company;
- a unit trust; or
- a common contractual fund.

Unit trusts and CCFs are required to appoint a management company, however, an ICAV and an investment company may appoint a management company or may operate on a self-managed basis.

#### ICAV

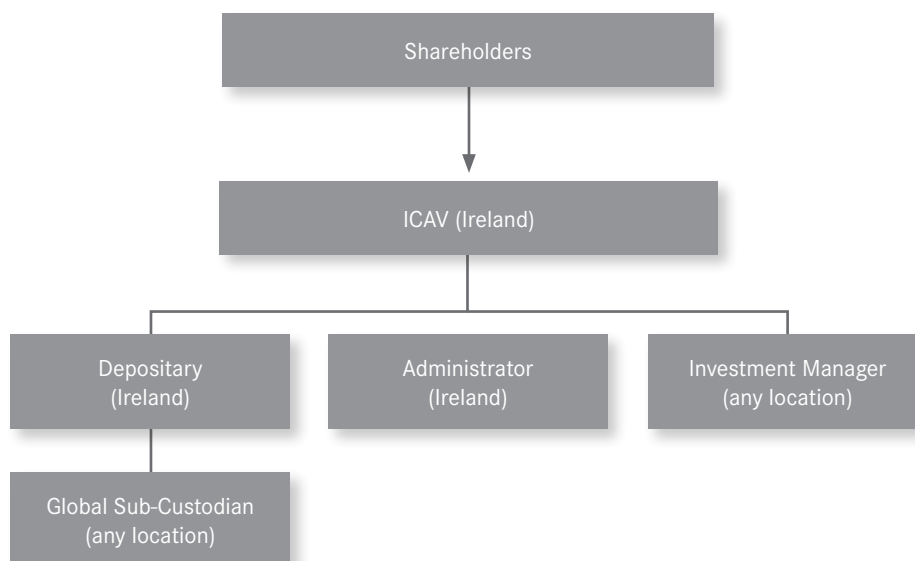
A new corporate fund structure for Irish investment funds was introduced in March 2015 called the ICAV. The ICAV sits alongside the investment company or public limited company (“**plc**”) structure, which has been the most successful and popular of the existing Irish fund structures to date. The new structure represents a modernising and streamlining of the investment company fund structure and is 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 for UCITS. One of the primary 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. This separate legislative regime also offers the benefit of future adaptation to meet the evolving requirements of investment funds.

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 may either be managed by an external management company or be a self-managed entity.

The ICAV offers a range of potential cost-cutting benefits, which mean that the ICAV is expected to become the vehicle of choice, regardless of the domicile of the investor base. 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 the introduction of the ICAV, there has been a growing interest in establishing UCITS as ICAVs in preference to the other available legal structures.

#### ICAV with no Management Company



**Investment Company**

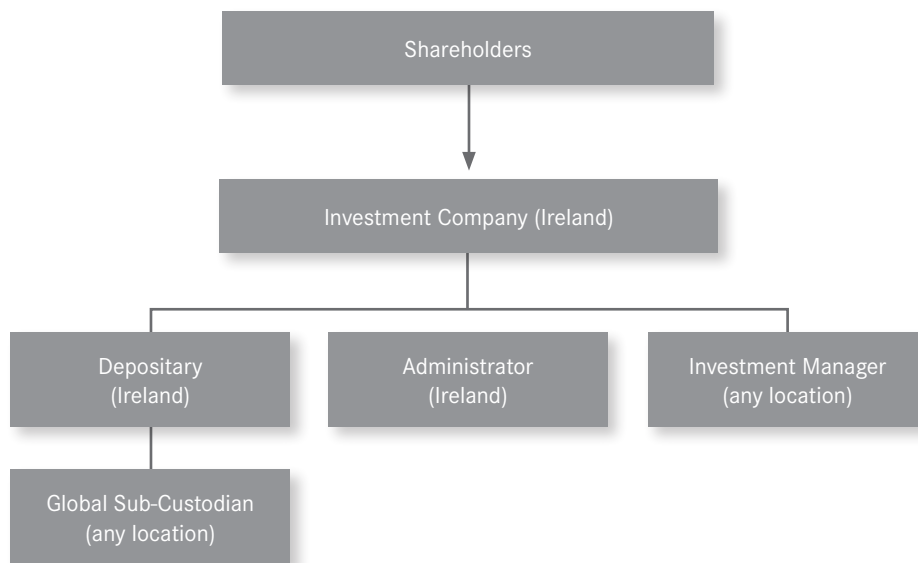
An investment company is an entity with distinct legal personality which is managed and controlled by its board of directors and can enter into contracts in its own name. The assets are the property of the company and each investor holds shares in the company. A depositary is appointed to safe-keep the assets on behalf of the company.

The paid up share capital of the company must at all times equal the net asset value of the company, the shares of which have no par value. An investment company may be structured as a stand-alone fund or an umbrella fund. The constitutional document of an investment company is the memorandum and articles of association. The liability of shareholders in a UCITS fund established as an investment company is limited.

In terms of applicable Irish company law, for UCITS established as investment companies, the provisions of the Irish Companies Act 2014 apply, save to the extent that they are amended or disappplied by the Companies Act 2014 itself or by the UCITS Regulations. UCITS are also governed by the Central Bank UCITS Regulations, together with related guidance.

The chart below illustrates a typical self-managed investment company structure.

**Investment Fund Company with no Management Company**



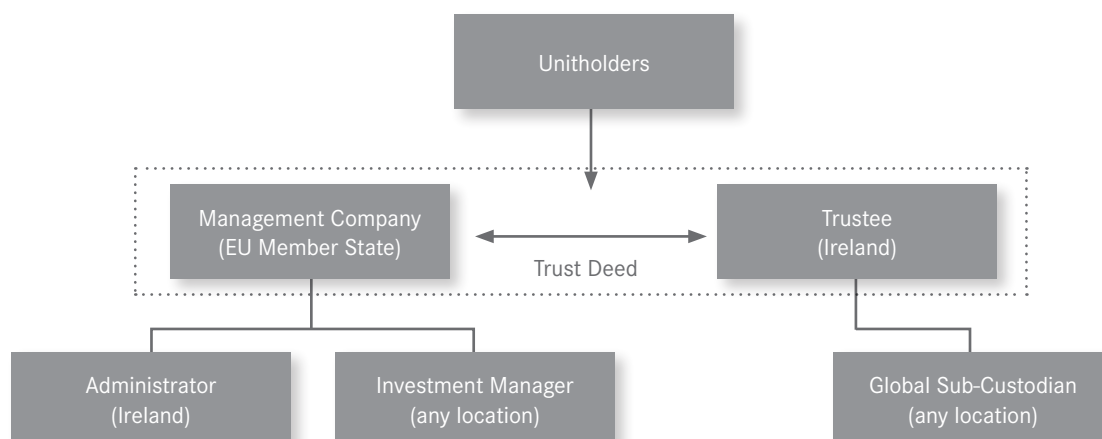
**Unit Trust**

A unit trust is created by a trust deed entered into by the trustee (being the depositary) and the manager of the fund. The use of a management company in this structure is a necessity. It is a contractual arrangement and is not a separate legal entity, with the result being 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 a unit 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.

A unit trust may be structured as a stand-alone fund or an umbrella fund.

A UCITS unit trust is governed by the UCITS Regulations, the Unit Trusts Act 1990 and by the Central Bank UCITS Regulations, together with related guidance.

A typical unit trust structure is illustrated below.



### Common Contractual Fund

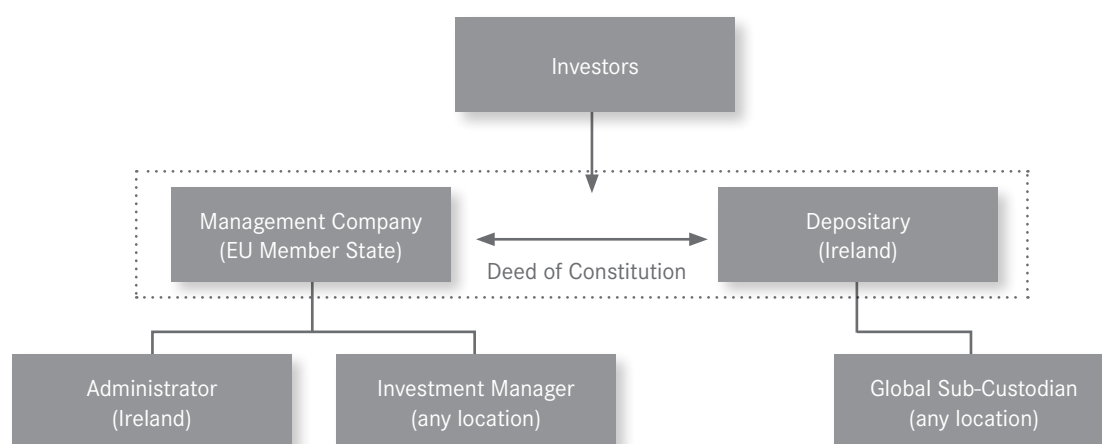
The common contractual fund (“**CCF**”) has a similar structure to FCPs (Fonds Commun de Placement) established in Luxembourg. A CCF is an unincorporated body established by a manager pursuant to which the investors, through contractual arrangements, participate and share in the property of the fund as co-owners of the assets of the fund. As a co-owner, each investor will hold an undivided co-ownership interest as a tenant in common with the other investors.

The CCF is constituted under contract law (and not company law or trust law) by way of deed of constitution executed under seal between the manager and the depositary. As the CCF is an unincorporated entity, it does not have a distinct legal personality. Accordingly, the CCF cannot assume liabilities and, in the same way as for a unit trust, the manager and the depositary enter the various agreements for and on behalf of the CCF. The assets of the CCF are entrusted to a depositary for safe-keeping.

The main feature which differentiates CCFs from other investment funds is that a CCF is totally tax-transparent. This means that investors in a CCF would be treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares or units in an entity which itself owns the underlying investments.

UCITS established as CCFs are governed by the UCITS Regulations and Central Bank UCITS Regulations, together with accompanying guidance.

A typical CCF structure is illustrated below.



## 1.4 Fund Structure

### Umbrella Funds

A UCITS can be structured as an umbrella fund comprised of a number of separate sub-funds with different investment policies. Each sub-fund of an umbrella fund must be approved by the Central Bank and must comply with the UCITS Regulations. The exchange of shares or units between sub-funds of an umbrella does not incur any Irish tax liability.

For a UCITS structured as an ICAV or an investment company, the relevant legislation enables complete segregation of liability between sub-funds and the liabilities of a sub-fund are discharged solely from the assets of that sub-fund. The sub-fund of an umbrella will not be a separate legal person but the fund may sue and be sued in respect of a particular sub-fund, and may exercise the same rights of set-off between sub-funds as apply at law in respect of companies. Unit trusts and CCFs are also normally structured to provide for segregated liability between sub-funds.

### Multiple-Class Funds

A UCITS can also be established so that there are multiple classes of shares or units. In the case of an umbrella fund, these multiple classes of shares and units can be established within each sub-fund of an umbrella fund. Such classes may be differentiated on the basis of currency, distribution policies or charging structures and provide for the hedging of currency or interest rate risk at share class level.

### Fund of Funds

A UCITS can also be established as a fund of funds investing in shares or units of other investment funds, referred to as underlying funds, subject to certain investment limits.

### Master-Feeder Funds

A UCITS can be established as a feeder fund if it invests at least 85% of its assets in units of another UCITS (the master UCITS) and where the remaining 15% of its assets are invested in ancillary liquid assets and derivatives (such derivatives being utilised for hedging purposes only). The master UCITS must not be a feeder fund and must not itself invest in feeder funds.





## 2 Key Features of UCITS

## 2.1 Eligible Investments

The successful implementation in Ireland of the various European UCITS reform measures resulted in a significant increase in the range and diversity of UCITS funds being authorised. These developments culminated in the present approach whereby instead of simply establishing a list of specific financial instruments and transactions which are permitted investments, a set of criteria exists according to which a class of financial instrument can be assessed as falling within or outside the UCITS framework.

In summary, a UCITS must invest at least 90% of its assets in transferable securities or liquid financial assets listed or traded on recognised exchanges or markets. These include shares in companies (and other securities equivalent to shares), bonds and other forms of securitised debt, and other negotiable securities which carry the right to acquire any such transferable securities. They also include money market instruments, deposits, units in other investment funds and exchange traded or over-the-counter (“**OTC**”) financial derivative instruments. A UCITS can use these derivative instruments for investment purposes as well as for efficient portfolio management purposes.

This broad range of eligible investments permits UCITS to adopt a diverse variety of investment strategies. In particular, subject to diversification and concentration requirements and protections in respect of risk management and global exposure, a UCITS can engage in certain strategies which would traditionally have been regarded as alternative investment strategies, for example, certain long / short strategies or structured product strategies (including funds whose strategies are linked to eligible indices, funds which use systematic trading models and / or funds that have capital protection features). The range of eligible investments for UCITS continues to evolve and future European developments will affect the variety of investments that can be made by UCITS and the strategies which may be employed.

## 2.2 Investment and Borrowing Restrictions

A UCITS must invest in accordance with the investment and borrowing restrictions which derive from the UCITS Directive. Conditions are also imposed on the use of various instruments and techniques for efficient portfolio management.

The Central Bank may grant a derogation from certain fund investment limitations for up to six months following authorisation, provided that the UCITS continues to observe the principle of risk spreading.

A UCITS may borrow up to 10% of the net asset value of the fund, provided that the borrowing is on a temporary basis.

## 2.3 EU Passport

One of the primary objectives of the UCITS regime is to harmonise retail collective investment schemes in the EU through the introduction of a common investment vehicle which can be established and regulated in one EU member state and sold across the EU without the need for further authorisation. As such, UCITS have an “EU passport” enabling their units or shares to be marketed and sold to all types of investors, including retail investors, in the other EU member states.

Following the implementation of UCITS IV, a simplified, streamlined procedure in respect of cross-border registrations was introduced which has greatly shortened the time required to register in another jurisdiction. Under this procedure, a new UCITS or new sub-fund seeking to market units in another EU member state is required to inform its home state regulator of its intention by submitting a standard form of notification letter together with supporting documentation. Once satisfied with the filing, the home state regulator then electronically transmits the notification pack to the host state regulator no later than 10 working days after receipt. Generally, passporting may commence as soon as the home state regulator has confirmed that such transmission has been made. Member states are prohibited from imposing any additional requirements and only the key investor information document (discussed below) must be translated, which is a change from the previous requirements which had resulted in costly translations of offering documents, constitutional documents and financial statements.

## 2.4 Management Company Passport

As mentioned above, a UCITS structured as a unit trust or a CCF must have a management company. A UCITS structured as an investment company may appoint a management company or it may operate on a self-managed basis.

Prior to UCITS IV, the management company of a UCITS was required to be domiciled in the same member state as the UCITS which it managed. One of the key developments under UCITS IV was the introduction of a UCITS management company passport, which permits funds to be managed on a cross-border basis. This means that a management company located in one EU member state is permitted to manage UCITS established in other EU member states.

Where a management company wishes to provide such cross-border services to UCITS domiciled in another EU member state, it will be required to follow two sets of rules: (a) the rules of the management company’s home member state as regards organisational requirements, rules of conduct and prudential requirements; and (b) the rules of the UCITS’ home member state in relation to the constitution and functioning of the UCITS.

An application for a UCITS management company passport is initiated by way of a notification by the management company to its home state regulator of its intention to manage foreign UCITS. This notification must be accompanied by the submission of prescribed documentation, including a programme of the activities that the management company envisages undertaking as a manager of the UCITS. Once a complete filing is received, the management company’s home state regulator will then forward this information to the home state regulator of the UCITS within one month, along with various additional documentation.

The UCITS’ home state regulator can only refuse a management company’s application in defined circumstances set out in the legislation and it must first consult with the management company’s home state regulator.

## 2.5 Business Plan

As part of an application for authorisation, a UCITS management company or a UCITS self-managed ICAV or investment company must establish and file a detailed business plan with the Central Bank. The business plan must describe and demonstrate how the management company or self-managed ICAV or investment company will comply with the relevant organisational, control and conduct of business requirements.

Of particular note, the business plan must specifically address how the directors, or their delegates, will manage each of the following key managerial functions:

- regulatory compliance
- fund risk management
- operational risk management
- investment management
- capital and financial management
- distribution

While the board retains collective responsibility for each of the above key managerial functions, the board may delegate the execution of the managerial functions. In light of this, a “designated person” must take responsibility for each managerial function which is delegated and this must be detailed in the business plan. Designated persons may be directors or other individuals. Additionally, adequate lines of reporting and measures must be put in place to monitor the activity of the individual to whom the function has been delegated. There are some specific responsibilities, however, which the Central Bank requires senior management to carry out and which may not be delegated.

## 2.6 Risk Management Process

Where financial derivative instruments (“**FDI**”) are utilised by a UCITS, whether for investment purposes or efficient portfolio management, the Central Bank requires a risk management process (“**RMP**”) with respect to the use of FDI. This means that a UCITS must establish an extensive process in order to ensure that the risks involved in using FDI are properly managed, measured and monitored on an ongoing basis. This involves designing, implementing and documenting an RMP in order to meet key requirements of investor protection.

A UCITS must provide the Central Bank with details of its proposed FDI activity and risk assessment methodology. The initial filing with the Central Bank is required to include information in relation to:

- permitted types of FDI, including embedded derivatives in transferable securities and money market instruments;
- details of the underlying risks;
- relevant quantitative limits and how these will be monitored and enforced; and
- methods for estimating risks.

A UCITS is required to submit a report to the Central Bank on its FDI positions on an annual basis. The report, which must include information under the different categories identified above, must be submitted with the annual report of the UCITS and a UCITS must, at the request of the Central Bank, provide this report at any time.



## 2.7 Key Investor Information Document

UCITS IV introduced the requirement to produce a key investor information document (“**KIID**”). The purpose of the KIID is to summarise the essential characteristics of a UCITS so as to provide retail investors with sufficient information in respect of an investment product and its risks, thereby allowing them to make an informed investment decision. A KIID must be drafted in a clear and concise manner, in language which makes it easily understood by the average retail investor and must avoid the use of technical and legal jargon. All UCITS are required to have KIIDs in place.

The KIID constitutes a pre-contractual document to be provided to investors in a durable medium and free of charge prior to subscription. The KIID must be filed electronically with the Central Bank, together with a written confirmation that the KIID complies in full with the relevant regulations and guidance. The Central Bank will engage in spot checks on KIIDs filed.

## 2.8 Cross-Border Mergers of UCITS

Prior to UCITS IV, mergers between UCITS funds were subject to the local rules in each jurisdiction which differed as between jurisdiction and such mergers were subject to legislative and administrative obstacles.

UCITS IV established a European framework for mergers between UCITS funds intended to assist asset managers to consolidate their fund structures and thereby enhance economies of scale. Under this framework, mergers must be approved by the home state regulator of the merging UCITS and the merging UCITS’ regulator is required to consult with the home state regulator of the receiving UCITS. UCITS IV prescribes that where national laws of a member state require unitholder approval for a merger, such a requirement cannot be set at greater than 75% of the votes actually cast by unitholders present or represented at a meeting to consider the merger.

## 2.9 UCITS V

UCITS V amends the regulatory framework for UCITS to address issues relating to the depositary function, manager remuneration and administrative sanctions. UCITS V was transposed into national law on 18 March 2016.

UCITS V focuses on three main areas:

- a new depositary regime which includes a clarification of depositary eligibility, duties, liabilities and depositary-related disclosure requirements and a set of rules under which tasks and responsibilities can be delegated;
- rules governing remuneration policies of both UCITS management companies and self-managed UCITS, that must be applied to key members of the UCITS managerial staff; and
- the harmonisation of the minimum administrative sanctions regime across member states.

One of the purposes of UCITS V is to more closely align the UCITS regime with the provisions relating to depositaries, remuneration and sanctions under the AIFMD, although there are some notable differences between the two regimes. Further information on UCITS V may be accessed on our UCITS webpage.





### 3 Overview of Authorisation Process

### 3.1 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 fund.

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 UCITS management company will also act as investment manager, there is no need for a separate investment manager application process; this is included as part of the UCITS approval process.

European Economic Area ("EEA") investment managers that wish to be appointed to act as discretionary investment managers for Irish funds and are authorised under the Markets in Financial Instruments Directive (**MiFID**) do not have to go through a Central Bank approval process. However, it is necessary to confirm with the Central Bank in advance that the Central Bank has previously been notified that the investment manager will act for Irish investment funds.

Non-EEA investment managers that wish to be appointed to act as discretionary investment managers for UCITS must go through a pre-approval process with the Central Bank. The Central Bank will only approve investment managers which are authorised and subject to prudential supervision in their home jurisdiction.

In determining the suitability for approval, the Central Bank relies on a detailed application form which must be completed and filed 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 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 and value of assets which the applicant has under discretionary management; and
- curriculum vitae for the directors or relevant senior managers of the applicant;

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;
- 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); and
- two references for the applicant.

The approval process generally takes approximately three to five weeks (the timing depends significantly on the speed with which responses to the Central Bank's queries are provided).

### 3.2 Management Company

As mentioned above, a UCITS structured as a unit trust or a CCF must have a management company. A UCITS structured as an ICAV or an investment company may appoint a management company or it may operate on a self-managed basis.

Irish UCITS management companies are regulated under the UCITS Regulations and the Central Bank UCITS Regulations. An Irish management company applying to the Central Bank to manage a UCITS must file a business plan as referred to above.

A UCITS management company must generally have a minimum level of financial resources equivalent to 125,000 plus an "additional amount" (being 0.2% of the amount by which the net asset value of the funds under management exceeds 250,000,000 or one quarter of its preceding year's total expenditure, whichever is greater). Where an ICAV or an investment company opts to be self-managed, it must comply with many of the same authorisation requirements as management companies and will be required to prepare a business plan. In addition, it must comply with a minimum capital requirement of 300,000. This initial capital may be removed from the fund once it has received subscriptions from investors of at least 300,000.

Since the UCITS Directive came into effect in 2011, it is possible for a management company located in another EU member state to manage an Irish domiciled fund, or for an Irish management company to manage a UCITS domiciled in another EU member state. See "Key Features of a UCITS - Management Company Passport" at section 2.4 above.

### 3.3 Approval of Fund Directors

Irish UCITS funds and management companies of Irish domiciled UCITS funds must have at least two Irish resident directors. All directors of Irish domiciled UCITS investment companies and directors of the management company must be pre-approved by the Central Bank as part of its Fitness and Probity Regime. The proposed directors, whether previously approved or not, are required to submit information to the Central Bank in advance by completing an individual questionnaire ("**IQ**") on the Central Bank's online reporting system. While the Central Bank does not prescribe the experience and expertise required of each director, the fitness and probity standard required and the IQ and supporting documentation must demonstrate that the director is:

- competent and capable;
- honest, ethical and able to act with integrity; and
- financially sound.

It is important to initiate the director approval process as early as possible as a fund will not be authorised by the Central Bank unless each director has received Central Bank approval.

### 3.4 Selection of Depositary and Administrator

Irish domiciled UCITS funds 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 unitholder register. No single company may act as both administrator on the one hand and depositary on the other, although affiliated companies of the same group may, and regularly do, perform the administration and depositary functions independently. All of the world's leading depositaries and administrators are Central Bank-approved and have a significant presence in Ireland.

### 3.5 Incorporation / Registration

Matheson can arrange for the incorporation of an investment company or the registration of the ICAV where this is the chosen fund vehicle. Our company secretarial department can deal with the necessary filings with the Companies Registration Office and the Central Bank respectively in this regard. This will take place at the outset of the project and the process includes a launch board meeting to approve the various documents and ancillary matters related to the fund authorisation.

Matheson can also assist in the setting up and drafting of documentation for UCITS which are instead structured as unit trusts or CCFs.

### 3.6 Submission of Fund Documentation to the Central Bank

Once the investment manager has been approved by the Central Bank, the following draft fund documentation must be submitted to the Central Bank for its initial review:

- relevant Central Bank application forms;
- directors' letter of application for authorisation of the fund;
- fund prospectus and supplements (where appropriate);
- depositary agreement (where the fund is established as an investment company);
- trust deed (where the fund is established as a unit trust);
- risk management process document (if the UCITS will engage in the use of derivatives);
- business plan; and
- confirmation letters (where relevant).

A process of addressing any comments raised by the Central Bank follows this initial filing of fund documentation. Once the Central Bank has completed its review and has confirmed that it has no further comments on the documentation, a final set of documents is agreed and filed for formal approval by the Central Bank. The following additional documentation must also be filed with the Central Bank on the day of the fund's authorisation:

- instrument of incorporation (where the fund is established as an ICAV), memorandum and articles of association (if established as an investment company), or deed of constitution (if established as a CCF);
- certificate of incorporation (where the fund is established as an investment company);
- management agreement (where the fund is not self-managed);
- investment management agreement;
- administration agreement; and
- various confirmations from the fund's legal advisers and the service providers.

Matheson can prepare the above fund documentation in conjunction with the client and the relevant service providers.



### 3.7 Turnaround Time

The Central Bank will generally provide initial comments on the draft documents submitted for review within a two to three week period.

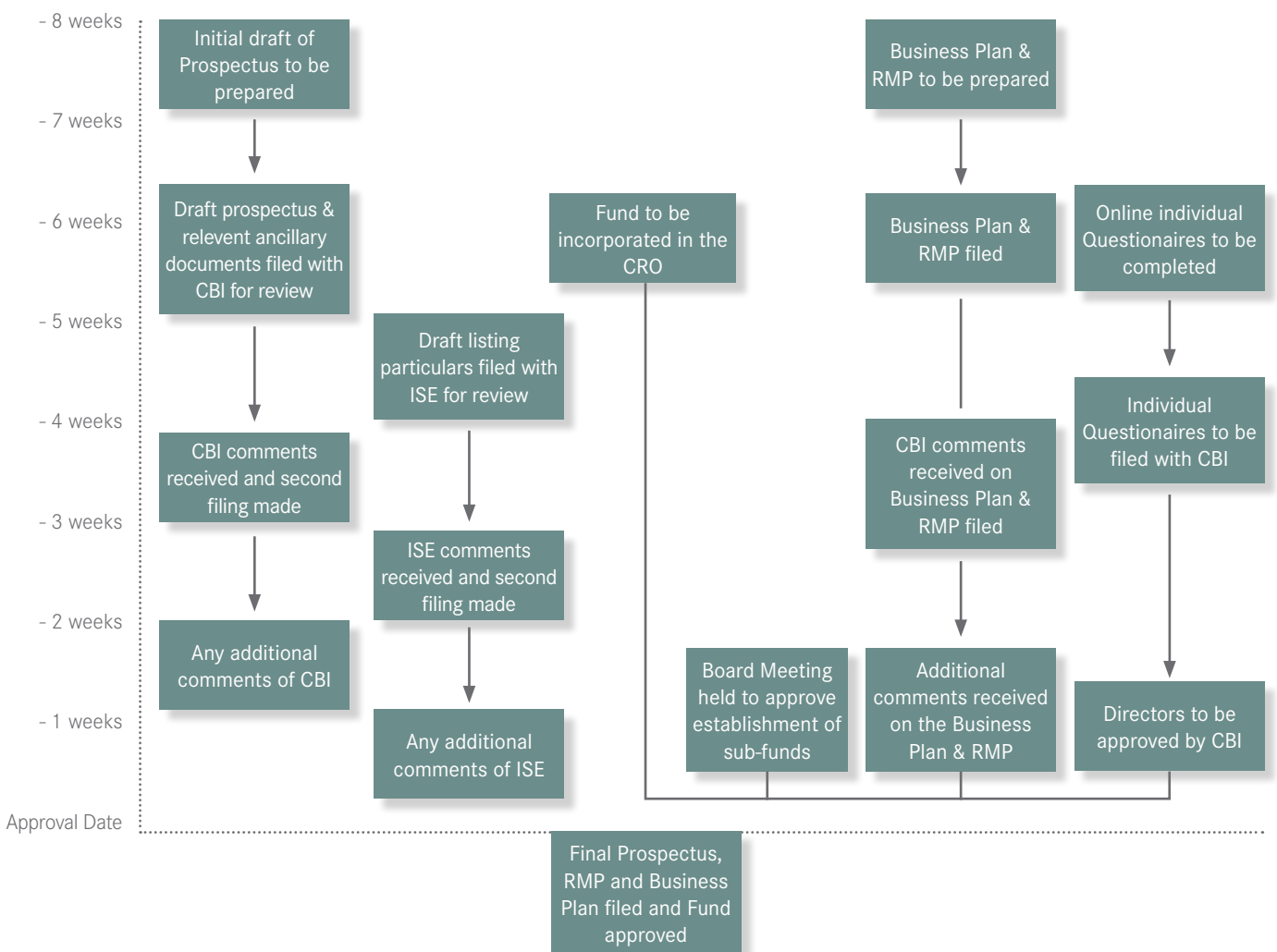
On the basis that initial comments are addressed with outstanding issues negotiated and agreed and revised documents submitted to the Central Bank for further review, the Central Bank’s authorisation generally issues within six weeks of the initial filing date. Specific factors can impact upon the precise time taken for authorisation (for example, the complexity or degree of novelty associated with the fund or the number of issues in respect of which derogations from the Central Bank’s policy have been sought) and this timeframe is also dependent on the speed with which responses to any Central Bank comments are provided.

The fund cannot commence business until the letter of authorisation issues. However, prior to the Central Bank authorisation, the fund can produce a “red herring” draft prospectus, with appropriate qualifications, for marketing purposes. This can be employed to determine investor interest prior to launch.

### 3.8 Central Bank Authorisation and Board Approval

A meeting of the fund’s directors, for an ICAV or an investment company, and the directors of the management company, for a unit trust or CCF, will need to be convened to review and approve the documentation for the fund and to appoint the various service providers (ie, the “launch” board meeting). This meeting is usually held once the Central Bank has confirmed that it has no further comments on the documentation or once it is clear that any material issues have been agreed with the Central Bank. Once the fund is clear of comment and all documentation has been finalised, original documents must be submitted to the Central Bank by 12 noon on the day on which authorisation is required. Authorisation will then issue later that day.

#### Timeframe to Approval







## 4 Taxation of Irish Domiciled Funds

### 4.1 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).

### 4.2 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. CCFs are not required to obtain investor declarations (due to their tax transparent nature).

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.

### 4.3 Treaty Access

The Irish tax authorities consider that Irish domiciled funds (other than 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 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 CCF's investment is located) and the unitholder'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.

### 4.4 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.



## 5 Irish Stock Exchange Listing

The Irish Stock Exchange (“**ISE**”) 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 the ISE, 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 the ISE, 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. More recently, the ISE has launched its Global Exchange Market for investment funds, which is a multilateral trading facility regulated by the ISE. Investment funds can now choose to list on either the regulated Main Securities Market of the ISE or the exchange-regulated Global Exchange Market of the ISE. Investment funds listed on GEM will not be subject to the Prospectus Directive, the Transparency Directive or the Statutory Audit Directive.

The listing process can be completed contemporaneously with the Central Bank’s authorisation process.

Umbrella funds may be listed, through the approval by the ISE 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 ISE 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 Irish domiciled funds, many of the listing requirements are dis-applied.

The prospectus will be used as the listing particulars for the purposes of the ISE and copies of the UCITS documents discussed at 3.6 above will be filed with the ISE as necessary. In addition, further documents need to be filed with the ISE 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 ISE 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 the ISE 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 the ISE.



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Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team can be accessed at [www.matheson.com](http://www.matheson.com).

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