

Investment Structures

UCITS

A UCITS fund (Undertaking for Collective Investment in Transferable Securities) that is authorised by the Irish Financial Services Regulatory Authority of Ireland may be offered for sale to members of the public in other member states of the European Union without the requirement for further authorisation in those other countries.

A UCITS fund must, however, comply with marketing and advertising regulations applicable to local UCITS funds established in those other member states. This authorisation under UCITS is commonly described as the "Single European Passport".

A UCITS Fund may be established as one of two legal forms:

1. As an open-ended unit trust which is established under the UCITS regulations
2. As an open or closed-ended investment company registered as a public limited company which is established under the UCITS regulations

Non-UCITS

In addition to UCITS funds which may invest primarily in transferable securities, funds which invest in a wider variety of assets may also be established on one of three legal forms:

1. A unit trust authorised under the Unit Trust Act 1990;
2. An investment company registered as a public limited company under Part XIII of the Companies Act 1990;
3. An investment limited partnership authorised under the Investment Limited Partnership Act 1994.

These fund vehicles were established on Irish books in recognition of the fact that there is an appetite in the investment community for product with broader investment policies than those that can be accommodated within the UCITS criteria.

Unit Trust

One of the legal structures available for Irish funds is the unit trust. The principal legislation governing the creation of unit trusts in Ireland is the Unit Trusts Act, 1990. A unit trust operates as an investment fund established under a trust deed made between (i) the management company and the (ii) trustee. The trustee acts as the legal owner of the fund's assets on behalf of the investors who are each entitled to an undivided beneficial interest in the fund. Similar to shareholders in an investment company the unit holders are entitled to attend and vote at meetings on matters affecting the fund.

The trust deed is the primary legal document which constitutes the trust and it sets out the various rights and obligations of the trustee, the management company and the unit holders. The trust deed will usually delegate the day to day management of the unit trust to the management company who usually delegates these functions to third party service providers.

Variable Capital Company

Companies are registered under a series of Acts called the Companies Acts 1963 to 1999. The shareholders of the company enjoy limited liability. The main aim of funds set up as investment companies is the collective investment of its funds and property with the aim of spreading investment risk. A company is managed for the benefit of its shareholders. Variable capital companies can repurchase their own shares and their issued share capital must at all times be equal to the net asset value of the underlying assets.

Irish companies must have a minimum of two Irish directors.

All UCITS funds and most non-UCITS funds are marketed to the public. Therefore most companies are set up as public limited companies. An investment company set up as a public limited company is required to have a minimum share capital of EUR 38,000 - 25% of which must be paid up before commencement of business.

Common Contractual Fund

A CCF is a contractual arrangement established under a deed, which provides that investors participate as co-owners of the assets of the fund. The ownership interests of investors are represented by 'units', which are issued and redeemed in a manner similar to a unit trust.

The CCF is an unincorporated body, not a separate legal entity and is transparent for Irish legal and tax purposes. As a result, investors in a CCF are 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.

A CCF can be established as a UCITS fund (Undertakings for Collective Investment in Transferable Securities) or a non-UCITS fund. Tax transparency is the main feature, which differentiates the CCF from other types of Irish funds. The CCF is authorised and regulated by the Irish Financial Regulator.

Investment Limited Partnership

The investment limited partnership fund structure was introduced into Ireland in July 1994 under the Investment Limited Partnerships Act, 1994. An investment limited partnership is a partnership of two or more persons having as its principal business the investment of its funds in property of all kinds and consisting of at least one general partner and at least one limited partnership. The limited partner is equivalent to the shareholder in a company while the general partner would be the equivalent of the Management Company in a unit trust.

The main advantage of a limited partnership is that the partnership does not have an independent legal existence in the way that a company does. All of the assets and liabilities belong jointly to the individual partners in the proportions agreed in the partnership deed. Similarly the profits are owned by the partners. This structure may have some tax benefits associated with it. Each partner is entitled to use any tax reliefs and allowances the partnership is entitled to as agreed between each partner, subject to any tax rules governing the allocation of the reliefs and allowances.

Feeder Fund

A feeder fund's principal objective is to invest in another fund (the master fund). Such funds may be authorised as a non-UCITS fund and as either a master fund or as a feeder fund. The feeder fund and the master fund may be domiciled in different jurisdictions and may also be set up as different legal structures.

Master Fund

The Manger of the master fund must waive any sales charge in relationn to the issue of units/shares to the feeder fund.

Feeder Fund

A feeder fund may invest in a master fund authorized in Ireland or elsewhere so long as the master fund is subject to regulations which provide for equivalent protection of investors' interests. The Financial Regulator Notice NU 22 specifies certain conditions necessary for a master/feeder fund structure.

Futures & Options Capital Protected

A collective investment scheme which invests in futures and options and other derivative instruments and which provides for the protection of capital invested in the scheme over a given period (not greater than seven years) can only be authorised as a non UCITS fund.

Before authorising this scheme, the Financial must be satisfied that the investment advisors have specific experience in this area. The liability of each fund must be limited to the fund itself or in the case of a sub-fund of an umbrella schema to the net assets of that sub-fund. The Financial Regulator Notice NU 20 specifies further the restrictions in this type of scheme.

Leveraged Futures & Options

A collective investment scheme which invests in futures and options and other derivative instruments, which does not provide for the protection of capital invested in the scheme, can only be authorised as a non-UCITS fund.

The provisions are similar to the provisions for a capital protected futures and options fund with the exception of the provisions relating to the protection of capital.

In addition (these do not apply to a Qualified Investor Fund)

(i) the fund's assets must include liquid assets which always have a total minimum value at least equal to the sum of all margin deposited and premium paid in respect of open transactions;

(ii) risk warnings must be given dealing with the above average risk of the fund, its suitability as being only for investors able to take that risk and recommending that no more than 5% of an investor's portfolio should be invested in the fund. Before authorising this scheme the Financial Regulator must be satisfied that the investment advisors have specific experience with this type of fund. The Financial Regulator Notice NU 21 specifies further the restrictions in this type of scheme.

Professional Investor Fund

The eligibility of investors normally does alter the investment and borrowing restrictions applied to a non UCITS fund authorised by the Irish Financial Services Regulatory Authority. The Irish Financial Services Regulatory Authority will authorise a non UCITS fund as a Professional Investor fund if the minimum subscription is EUR 125,000 or more. In this type of fund some of the non-UCITS borrowing and investment restrictions may be disapplied at the discretion of the Financial Regulator.

The Financial Regulator Notice NU 12 deals with in detail the requirements for a professional investor fund.

Qualified Investor Fund

All of the Financial Regulator's investment and borrowing restrictions are automatically derogated from for a QIF. To qualify as a QIF, the minimum subscription is EUR 250,000. In addition the investor must be either:

(i) a person with a minimum net worth in excess of EUR 1,250,000 excluding main residence and household goods or

(ii) an institution (a) which owns or invests on a discretionary basis at least EUR 25 million or its equivalent in other currencies or (b) the beneficial owners of which are qualifying investors in their own right.

The qualifying investor is required to certify itself as such on the application form for investment in the fund. The Financial Regulator Notice NU 24 deals with QIF funds.

Venture Fund

A venture capital fund may be authorised as a non-UCITS fund. The title of the scheme must make it clear that it is a venture capital fund. Before authorising such a scheme the Financial Regulator Authority must be satisfied that the investment advisors have specific experience in the area. Additional requirements are detailed in the Financial Regulator Notice NU 14.