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Ireland

Alternative Investment Funds

Contributor

K&L Gates

Shane Geraghty

Partner | shane.geraghty@klgates.com

Gayle Bowen

Partner | gayle.bowen@klgates.com

Hazel Doyle

Partner | hazel.doyle@klgates.com

This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in Ireland.

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Ireland: Alternative Investment Funds

1. What are the principal legal structures used for Alternative Investment Funds?

Irish Alternative Investment Funds (“**AIF**”) authorised and regulated by the Central Bank of Ireland (“**CBI**”) can be divided into three categories: Retail Investor Alternative Investment Fund (“**RIAIF**”), Qualifying Investor Alternative Investment Fund (“**QIAIF**”) and European Long-Term Investment Fund (“**ELTIF**”).

All of above are subject to the Alternative Investment Fund Managers Directive (“**AIFMD**”) and to the recent amendment of AIFMD (“**AIFMD II**”) under Irish law.

RIAIFs are open to retail investors with no minimum investment requirements but are subject to eligible asset restrictions. QIAIFs are targeted at qualifying investors with a minimum investment of €100,000. ELTIFs are open to both professional and retail investors in the EU, targeting long-term assets.

Ireland has an extensive range of structures available. The principal structures used for AIFs in Ireland are as follows:

- Irish collective asset management vehicles (“**ICAV**”) as established under the Irish Collective Asset Management Act, 2015 as amended (“**ICAV Act**”). ICAVs are corporate bodies, with separate legal personality and have limited liability. ICAVs are the preferred corporate type AIF structure in Ireland and also have the ability to make a check the box election to be treated as a partnership if they wish under US taxation rules.
- Investment limited partnerships (“**ILP**”) as per the Investment Limited Partnership Act, 1994 (as amended) (the “**ILP Act**”). ILPs are formed pursuant to a limited partnership agreement between one or more general partners and one or more limited partners. Limited partners contribute capital while the general partner is personally liable for the debts and obligations of the partnership.
- Unit Trusts (“**UT**”) as per the Unit Trusts Act, 1990, as amended. UTs are contractual arrangements created pursuant to a trust deed between a management company and a trustee (depositary). UTs do not possess legal personality. A unit represents an undivided beneficial interest in the assets of the UT.
- Common Contractual Funds (“**CCF**”) as per the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (“**CCF Act**”). CCFs are constituted under contract law pursuant to a deed of constitution executed under seal by a management company and a depositary. CCFs do not have legal personality. Participants hold an undivided co-ownership interest as ‘tenant in common’ with other participants.
- Designated Investment companies (“**PLC**”) as per Part 24 of the Companies Act, 2014 (as amended). Prior to the introduction of the ICAV, PLCs were the favoured structure for AIFs in Ireland. PLCs are public limited companies with variable capital authorised under the Companies Act 2014 and regulated by the CBI.

Each of the above structures can be established as umbrella structures with legal segregation of assets and liabilities between sub-funds.

AIFs can also be structured as unregulated structures (although still subject to AIFMD), typically in the form of:

- Limited Partnership as established under the Limited Partnership Act 1907;
- Real estate investment trusts; or
- Exempt UTs.

2. Does a structure provide limited liability to the investors? If so, how is this achieved?

Yes, all of the structures mentioned in Q1 permit the limitation of liability of investors and such liability is typically limited to the sum they have invested / have commitment to invest in the AIF. In the context of ILPs, amounts (i.e. profits) distributed to investors by the general partner above the amount invested by such investors can be subject to clawback provisions detailed in the relevant limited partnership agreement which may mean that the liability is not limited to sum such investors have invested / have committed to invest at the outset. However, recent amendments to the ILP legislation provide a non-exhaustive list of safe harbour provisions that reduce the clawback provisions.

3. Is there a market preference and/or most preferred structure? Does it depend on asset class or investment strategy?

As mentioned in Q1, PLCs were previously the preferred structure but have since been largely displaced by ICAVs since their introduction in 2015. Indeed, ICAVs are now the dominant structure for Irish regulated AIFs and are generally the default choice unless there are specific tax, investor or strategy reasons to adopt an alternative structure.

ILPs have also received increased attention following the reforms introduced by the Investment Limited Partnerships (Amendment) Act 2020, particularly for private equity, private credit, venture capital and infrastructure strategies.

Further reforms to the Limited Partnerships Act 1907 may increase interest in Irish limited partnership structures which are not regulated by the CBI but which may still be subject to the provisions of AIFMD.

The choice of legal structure will depend on a range of factors, including tax treatment, investor requirements, investor familiarity, regulatory considerations, governance arrangements, operational flexibility and the nature of the underlying investment strategy.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

Yes, the regulatory regime in Ireland does distinguish between open-ended and closed-ended AIFs as provided for in the CBI's AIF Rulebook (the "Rulebook") which applies different rules between investor categories (retail vs qualifying) as well as between fund type (QIAIF vs RIAIF vs ELTIF).

Open-ended: An AIF is considered open-ended by the CBI where it:

• provides redemption facilities on at least:

(i) a monthly basis in the case of a RIAIF; or (ii) a quarterly basis in the case of a QIAIF;

• redeems, when requested, at least:

(i) 10% of net assets in the case of a RIAIF/QIAIF that redeems on a monthly basis or more frequently; or (ii) 25% in the case of a QIAIF that redeems on a quarterly basis; and

• does not impose a redemption fee in excess of:

(i) 3% of the net asset value per unit in the case of a RIAIF; or (ii) 5% in the case of a QIAIF.

An AIF which provides for a period of greater than 30 days in the case of a RIAIF and 90 days in the case of a QIAIF between the dealing deadline and the payment of redemption proceeds will not be subject to the above requirements, provided that it classifies itself as open-ended with limited liquidity.

Closed-ended AIFs typically do not allow redemptions during the life of the fund and the CBI requires closed-ended funds to have a predefined term (including extension features).

The Rulebook also provides for additional requirements for AIFs which pursue certain investment strategies, particularly in the context of Retail AIFs (i.e. funds of unregulated funds, real estate funds, venture capital, private equity and money market AIFs). The Rulebook makes no distinction for QIAIFs save in the case of MMFs and funds which invest 50% or more of NAV in other funds. In addition, the CBI has issued guidance in relation to AIFs which invest 50% (directly or indirectly) in Irish property assets which prohibits such funds from being established as purely open-ended funds. Accordingly, Irish AIFs investing in Irish real estate must be either closed-ended or open-ended with limited liquidity.

ELTIFs may only be categorised as closed-ended or open-ended with limited liquidity pursuant to Regulation (EU) 2015/760 as amended by Regulation (EU) 2023/606 (the "ELTIF Regulations").

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investors of an Alternative Investment Fund?

Open-ended AIFs are subject to the CBI's liquidity requirements as detailed in the Rulebook. Managers may restrict redemptions subject to compliance with these requirements. Managers wishing to adopt more restrictive redemption provisions (i.e. longer notice periods, less frequent redemption dates) may do so provided the AIF is categorised as open-ended with limited liquidity. The AIF will remain open-ended for the purposes of AIFMD.

Under the requirements of Rulebook it is necessary to disclose in the AIF's governing documents, the selected liquidity management tools ("LMTs") and the terms and conditions under which an LMT can be activated and deactivated. AIFMs and the AIFs are required to consider selecting at least one quantitative based LMT (redemption gate, extension of notice period, redemption in kind) and at least one anti-dilution tool (swing pricing, redemption fee, dual pricing, anti-dilution levy).

The determination of the degree of liquidity which an AIFM offers investors will ultimately be driven by the liquidity profile of the underlying investments which the AIF will invest. The CBI expects liquidity arrangements to be appropriate in light of the liquidity of the underlying investments so as to avoid liquidity mismatch between the redemption terms and the assets of the relevant AIF.

AIFs investing in private market assets such as private equity, real estate or venture capital will typically be structured as closed-ended or semi-liquid funds. Portfolio concentration may also require a closed-ended or semi-liquid structure.

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

As noted in Q5, AIFMD II and the Rulebook have introduced provisions on the mandatory availability and use of specific LMTs that apply to all open-ended AIFs. These tools are intended to help AIFMs manage redemption pressure, protect remaining investors from dilution, and reduce the risk of forced asset sales during periods of market stress.

AIFMs will typically supplement these tools with portfolio liquidity monitoring, stress testing, cash management and asset allocation measures to ensure that the liquidity profile of the fund remains consistent with its redemption policy.

7. Are there any restrictions on transfers of investors' interests?

Irish law does not generally impose statutory restrictions on the transfer of shares or interests in AIFs. Investors in QIAIF structures are not permitted to transfer to third parties who do not meet the definition of a Qualifying Investor. It is the case that most QIAIFs introduce their own contractual limitations on transferability, which are set out in the fund's constitutional documents and offering materials. A limited partner in an ILP, for instance, may find that its partnership interest cannot be transferred without the consent of the general partner, or that shares in an ICAV may not be sold to a US Person. The precise scope of any transfer or assignment restrictions will depend on the terms of the relevant fund documentation.

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

QIAIFs are subject to very few investment limitations when compared with the detailed diversification limits and eligible asset restrictions applicable to RIAIFs. As noted above, the CBI also has specific requirements in relation to Irish real estate AIFs. AIFMD II also prescribes certain limitations in relation to Loan Origination AIFs.

The ELTIF regime provides for prescribed eligible asset and diversification requirements applicable to ELTIFs and AIFMD also prescribes certain asset stripping requirements where an AIF acquires control of certain non-listed companies.

9. What is the local tax treatment of (a) resident, (b) non-resident, (c) pension fund and (d) sovereign wealth fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax status or preference of investors or the tax treatment of the target investments primarily dictate the structure of the Alternative Investment Fund?

Investors in AIFs are typically classified as:

(i) Irish resident investors – Irish resident individual investors are generally subject to Irish exit tax at 38% on relevant distributions and gains, subject to applicable exemptions. If the Irish resident investor is a body corporate, then it is liable for 25%.

(ii) Non-Irish resident investors – Non-resident investors can typically receive distributions and gains free from Irish tax provided that they have filed a non-resident declaration.

(iii) Exempt Irish resident investors – Certain categories of Irish resident investors are exempt from Irish exit tax, including approved pension schemes, other collective investment schemes, and charities.

As mentioned in Q3, the specific legal structure chosen for an AIF may be chosen by the preferred tax treatment of its investors. Indeed, ICAVs can opt to file a 'check the box' election to be treated as a partnership for US federal income tax purposes.

Likewise, AIFs established as CCFs and ILPs are treated as tax transparent for Irish tax purposes, with income and gains arising directly to investors rather than at fund level.

Furthermore, ILPs may also file 'check the box' election to be treated as a corporation for US federal income tax purposes. Unit Trusts are tax opaque and can also 'check the box'.

In practice, investor tax preferences are often a significant driver of fund structure selection, whether a tax transparent or opaque entity is chosen. Equally, the tax treatment of the underlying investments can influence structuring decisions.

10. What rights do investors typically have and what restrictions are investors typically subject to with respect to the management or operations of the Alternative Investment Fund?

As provided in the Rulebook, the RIAIF/QIAIF must, where relevant, specify in its constitutional documents the circumstances in which the AIFM, management company or general partner may be replaced with another AIFM/management company/general partner and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.

Investors may also be entitled to approve or be notified of certain matters, such as increases in fees and charges, material changes to the AIF's investment objective or investment policy.

As such, investors are generally afforded certain specified rights relating to governance, information and certain fundamental changes to an AIF, while day-to-day management remains delegated to the manager, AIFM or general partner.

The ILP Act prescribes certain activities in which limited partners may participate without being treated as general partners.

11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

As noted previously, ICAVs are the most popular legal structures for regulated AIFs in Ireland and provide considerable flexibility for customisation purposes.

ILPs are also highly customisable vehicles for AIFs and have started to become more popular for private fund sponsors owing to legislative and regulatory amendments which have been implemented over the last number of years.

Recent amendments to the Rulebook mean that QIAIFs may be established with share classes that provide for the (i) allocation of the returns of specific assets to a share class and / or (ii) participation by a share class other than on a pro rata basis. Establishment of share classes which provide for such differentiated participation are permissible to reflect: (a) issue of shares at a price other than net asset value without prior approval of the Central Bank; (b) excuse and exclude provisions; (c) stage investing; and (d) management participation.

ICAVs and ILPs are well suited to a range of strategies including private equity funds, private credit funds, and other alternative investment strategies. As noted above, QIAIFs pursuing private markets strategies are typically structured as open-ended with limited liquidity or closed-ended AIFs.

12. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Irish domiciled AIFs are required to appoint an AIFM to take responsibility for the management of the AIF and for compliance with AIFMD. The AIFM is required to be either (i) an external manager or (ii) in very specific circumstances, the AIF itself (for PLCs or ICAVs only – very exceptional).

The AIFM to a QIAIF may be: (a) an AIFM authorised by the CBI; (b) an AIFM authorised by the regulator of another EU Member State; or (c) a non-EU investment manager, designated as an AIFM (such entity must obtain approval from the CBI to act as investment manager to regulated Irish AIFs but is not authorised by the CBI).

An ELTIF authorised to carry out loan origination must appoint an authorised Irish or EU AIFM.

Recent amendments to the Rulebook permit non-EU AIFMs to be appointed to loan origination QIAIFs provided such non-EU AIFMs comply with specified requirements, including that the QIAIF be closed-ended.

In accordance with the requirements of AIFMD, an AIFM may only delegate the investment management function to an entity which is authorised or registered for the purpose of asset management and subject to prudential supervision.

Where a prospective investment manager is not domiciled in Ireland, there must be a cooperation agreement between the CBI and the relevant third country supervisory authority of the prospective investment manager. The CBI has a fast-track application process for non-Irish EU investment managers authorised as UCITS management companies, AIFMs, MiFID investment firms or credit institutions authorised under Directive 2006/48/EC.

Non-EU investment managers must apply to the CBI to demonstrate appropriate regulation, experience, integrity and resources. The CBI has recognised over 20 jurisdictions as having comparable regulatory regimes, including the US, UK, Australia, Canada, Hong Kong, Japan, Singapore and Switzerland. The process for these entities is very straight forward and generally takes a few weeks to complete.

In accordance with AIFMD, an AIFM may be approved by the CBI as a sub-threshold AIFM where it either directly or indirectly manages AIF(s) whose AUM does not exceed €100m (or €500m where the AIFs are unleveraged and do not offer redemption rights within five years of investment).

In certain circumstances, unregulated non-discretionary investment advisors may be appointed without requiring Central Ban approval in respect of an AIF by an AIFM provided such investment advisors are not permitted to exercise any form of discretion or authority over the assets of the relevant AIF.

13. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

While RIAIFs, QIAIFs and ELTIFs must be approved and regulated by the CBI, other forms of AIFs may also be established which are not directly regulated by the CBI but which must comply with the requirements of AIFMD (e.g. limited partnerships established under the Limited Partnership Act 1907).

14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

No. There is no statutory or regulatory requirement in this regard.

15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

ICAVs, Plcs and Irish GPs

RIAFs and QIAIFs established as ICAVs or PLCs are required to have a minimum of two Irish resident directors, one of whom should be capable of being considered independent for good corporate governance.

The GP of an ILP may be a corporate entity, a natural person or a partnership and can be based in any jurisdiction. The board of directors of a corporate GP which is based in Ireland is subject to the same residency and independence requirements as ICAVs and Plcs.

The directors of an ICAV, Plc and a corporate GP are subject to the CBI's fitness and probity regime and must be approved in advance by the CBI on the basis that such a director role is considered to be a pre-approval controlled function under CBI rules.

Unit Trusts and CCFs

UTs and CCFs are not corporate entities and have no separate legal personality but they must appoint authorised fund management companies (authorised AIFM) and Irish authorised depositaries. Details of substance and other requirements concerning AIFMs are detailed below.

Irish AIFMs

Where an AIFM is authorised in Ireland, it is required to have a physical presence and sufficient resources in Ireland. This includes its board of directors, as well as designated persons ("DPs") who perform certain managerial functions such as investment management, distribution, risk management, operational risk management, regulatory compliance and capital and financial management. The CBI requires that most of an AIFM's DPs responsible for managerial functions to be located in Ireland. The board of directors of an Irish AIFM is subject to the same residency and independence requirements as detailed above. In addition, the directors and the DPs are subject to the CBI's fitness and probity regime and must be approved by the CBI to in advance of their formal appointment on the basis that such role is considered to be a pre-approval controlled function under its rules.

AIFMD II

AIFMD II has introduced enhanced oversight of delegation arrangements, requiring AIFMs to provide a clear rationale for delegations and to carry out robust monitoring. The delegation regime has been broadened beyond portfolio and risk management to include fund administration, marketing, distribution and loan origination, with enhanced substance and governance requirements.

16. What service providers are required by applicable law and regulation?

An AIF must appoint an AIFM, as well as a depositary under AIFMD. The depositary must be incorporated or have a registered branch in Ireland and must be authorised as either (i) an EU credit institution; (ii) a MiFID investment firm authorised to provide depositary services; or (iii) other entities subject to prudential regulation and ongoing supervision.

The CBI permits closed-ended QIAIFs to appoint specialist depositaries known as Depositaries of Assets other than Financial Instruments ("DAoFIs"). DAoFI may also be authorised to act for non-EU AIFs that are not regulated by the CBI. The categories of non-EU AIFs that a DAoFI may be appointed to act for is not restricted to the category of AIF set out above where the DAoFI is only appointed to perform cash monitoring and oversight functions.

As noted in Q15, unit trusts and CCFs must also appoint a management company authorised fund management companies (authorised AIFM) and Irish authorised depositaries. ILPs require the appointment of one or more GPs.

It is also common practice for the AIFMs to delegate some functions, such as administration and investment management functions to specialist providers. AIFMs can also appoint a non-discretionary investment advisors, in which case it retains the discretionary portfolio management function. The other key service providers include:

– Distributors / Placement Agents – Prime Brokers – Auditors* – Legal advisors* – Corporate secretary* (applicable to ICAVs and Plcs only) – Money laundering reporting officer ("MLRO")

*Mandatory appointments

17. Are local resident directors / trustees required?

See response to Q15 and Q16 above.

18. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

See response to Q12 above.

19. What are the common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

The CBI regularly conducts themed inspections as part of its regulatory function. In recent years, enforcement matters have related to the following thematic issues:

- delegation and substance requirements;
- liquidity management and stress testing;
- regulatory reporting accuracy (particularly regarding AIFMD Annex IV);
- valuation governance for private assets;
- loan origination compliance;
- conflicts of interest;
- governance effectiveness;
- fitness and probity;

As noted in Q15, AIFMD II has increased regulatory focus on delegation arrangements, including oversight of delegated portfolio management and certain additional service providers, with regulators paying particular attention to substance and potential 'letter-box entity' concerns.

20. What is the typical level of management fee paid? Does it vary by asset type?

The management fees charged to Irish AIFs is very much dependent on the investment strategy and the particular asset class. Some AIFs will utilise a management fee calculated as percentage of NAV while others may be based on percentages of capital committed or capital deployed. In addition, AIFs often use performance fees or carried interest arrangements depending on the type of fund structure and the investment strategy and asset class. Carried interest mechanisms are more typical in ILPs. Liquid strategies typical tend to attract lower management fees than private market strategies.

Management fees for Irish AIFs typically range from 0.5% to 2.00% of a fund's Net Asset Value, though fees outside this range are not uncommon. The precise level will depend on the fund's investment strategy and asset class, with funds pursuing similar strategies generally clustering around comparable fee levels. That said, management fees are the product of individual negotiation between the manager and its investors, and it is not unusual to see meaningful variation even among funds with closely aligned mandates.

21. Is a performance fee or carried interest typical? If so, does it commonly include a "high water mark", "hurdle", "water-fall", "preferred return" or other condition? If so, please explain.

The use of performance fees and carried interests is standard in the Irish market. As noted in Q20, carried interest mechanisms are more typically confined to ILPs and limited partnerships established under the 1907 Limited Partnership Act. The use of high water marks and hurdles would be standard within AIFs utilising performance fee mechanisms and distribution waterfalls with preferred returns being standard in carried interest structures.

Prior to any performance fee becoming payable, the depositary or competent person appointed by the AIFM and the approved by the depositary or another competent person appointed by the AIFM and approved by the depositary must verify the calculation of the performance as per the Rulebook.

ESMA's final report on guidelines on performance fees in investment funds applies to AIFs marketed to retail investors. The guidelines aim to establish a consistent framework governing the charging of performance fees to investors in RIAIFs, the conditions under which such fees may be payable and the manner in which they are disclosed to investors.

22. Are fee discounts / fee rebates or other economic benefits for initial investors typical in raising assets for new fund launches?

Fee discounts and fee rebates are not a regulatory requirement in Ireland but are rather part of a commercial arrangement between the investor and the AIFM. In practice, these incentives are commonly offered to cornerstone, seed or early-stage investors in a new fund launch but other factors may also be relevant.

AIFs may create a different class of share with a different fee structure to reflect whether the investor is a seed or early-stage investor, the investor's profile, investment size and timing of entry.

23. Are management fee "break-points" offered based on investment size?

Management fee breakpoints are commonly used in private funds and institutional AIFs and allow the management fee to reduce incrementally based on increases in the AIFs size. The use of break point fee arrangements is a commercial matter agreed with the AIFM or the investment manager.

24. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

First loss programs are not regularly used for AIFs.

25. What are the typical terms of a seeding / acceleration program?

When a new share class of an AIF is launched, units or partnership interests are initially offered at a fixed price for a specified period.

RIAIFs

RIAIFs are generally permitted an initial offer period of up to six months (up to one year for private equity or real estate RIAIFs, provided early investors are not prejudiced). Where there are multiple closings, the initial offer period must commence no later than first closing.

QIAIFs and ELTIFs

QIAIFs and ELTIFs are not subject to specific regulatory requirements regarding the duration of the initial offer period. Where subscription proceeds are received but units are not issued, investors may request return of proceeds, which must be arranged without undue delay and no later than three months from the request.

26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?

ESMA and the CBI have continued to increase their focus on the transparency and proportionality of fees applicable to funds (including AIFs).

In 2020, ESMA published guidelines on the calculation, charging and disclosure of performance fees which applies to Retail AIFs. ESMA also issued a Supervisory Briefing on supervisory convergence in respect of fund fees across Europe, promoting fairness, transparency and proportionality. The CBI has conducted similar review and issues specific guidance which seeks to strengthen the review and approval of fees.

Secondary funds often times, will have lower fee and carried interest rates than would be the case of primary funds owing to the nature of the investments and their strategy.

27. What restrictions are there on marketing Alternative Investment Funds?

QIAIFs can only accept investments from qualifying investors (as defined under the Rulebook), which are sophisticated investors and can include high net worth individuals provided they invest a minimum of €100,000 (or foreign equivalent) into the QIAIF. QIAIFs can be sold very easily across the EU to "professional investors" using the AIFMD pan-European marketing passport. An AIFM must notify its home regulator when it intends to market a QIAIF in another EU Member State. The AIFMD marketing passport application is made by the AIFM in respect of the AIF. ELTIFs can avail of a European marketing passport for both professional and retail investors.

RIAIFs can also avail of the AIFMD marketing passport when selling to professional investors within the EU, but are subject to local registration requirements when selling to retail investors.

28. Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

Yes, Directive 2019/1160 introduced a definition of 'pre-marketing' into AIFMD and this has been implemented into Irish law.

Any document prepared for use in relation to pre-marketing is required to disclose that it does not constitute an offer or invitation to invest in an AIF. Furthermore, such documentation should include disclosure that the information presented is incomplete and is not capable of being relied upon.

29. Can Alternative Investment Funds be marketed to retail investors?

Yes, RIAIFs can be marketed to retail investors in Ireland. Marketing of a RIAIF to retail investors in other EU Member States requires individual applications for registration under local marketing requirements. Retail ELTIFs can be marketed to retail investors in Ireland and the EU under the ELTIF marketing passport. Certain non-Irish AIFs may also be marketed to retail investors in Ireland in accordance with the requirements of the CBI.

30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?

Yes, in Ireland there is the RIAIF regime and Retail ELTIF.

31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?

RIAIFs and Retail ELTIFs

RIAIFs are not subject to any prescriptive rules regarding minimum investor qualifications. Similarly, retail ELTIFs are not subject to specific limitations.

QIAIFs

In order to invest in a QIAIF, an investor must qualify as a qualifying investor which falls under one of the prescribed categories, namely that they are sophisticated investors that understand the nature of the risks of the fund they are investing it. The Qualifying investor test is broader than the definition of professional investors under AIFMD and can include certain institutional and high net worth investors that may not be classified as professional investors.

Investors in a QIAIF must certify in writing to the QIAIF that they meet the minimum criteria and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investments is the potential to lose all of the sum invested. QIAIFs are generally subject to a minimum subscription amount of €100,000, with knowledgeable investor exemptions.

32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?

No, government entities and agencies, pensions funds and insurance companies all meet the definition of a professional investor as defined under AIFMD and, therefore, an AIF may be marketed to such entities.

33. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

An AIFM will typically appoint a global distributor (frequently the same entity as the investment manager). The distributor will be responsible for the marketing and distribution of the AIF. While the distribution function itself is not subject to regulation by the CBI, the appointed global distributor will ordinarily be a regulated entity (for example, a MiFID firm).

In addition, the regulatory frameworks of other EU Member States may require the appointment of local paying agents and the maintenance of local accounts by those agents.

34. Is the use of "side letters" restricted?

An AIF and/or an AIFM on behalf of an AIF can enter into side letters to provide for special arrangements to a particular investor in accordance with AIFMD. Any preferential treatment permitted under side letter arrangements must not result in an overall material disadvantage to the other investors in the AIF.

35. Are there any disclosure requirements with respect to side letters?

Investors must receive certain information before they invest in the AIF (as well as any material changes to such information following their investment). This information must include a description of the measures taken by the AIFM to ensure the fair treatment of investors. Where any investor receives, or has the right to receive, preferential treatment, the AIFM must also disclose the nature of that preferential treatment, the category of investors entitled to it and, where relevant, any legal or economic relationship those investors have with the AIF or the AIFM. The disclosures are usually provided at a high level and do not set out individual arrangements.

36. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

The most common side letter terms include (i) most favoured nations; (ii) transfer rights; (iii) excuse rights; (iv) enhanced reporting and information; (v) fees adjustments; (vi) information disclosure rights; and (vii) specific tax provisions.

Contributors

Shane Geraghty
Partner

shane.geraghty@klgates.com

Gayle Bowen
Partner

gayle.bowen@klgates.com

Hazel Doyle
Partner

hazel.doyle@klgates.com