Setting up a MiFID Firm in Ireland

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1. IRELAND AS A DESTINATION FOR INVESTMENT FIRMS

Ireland is a domicile of choice for many investment firms seeking to provide services in Europe. As a member of the European Union (**EU**), Ireland offers direct access to the EU single market for financial services. Once authorised in Ireland, investment firms can 'passport' their services to any EEA member state (i.e. the Member States of the EU together with Iceland, Norway, and Liechtenstein) without having to obtain further authorisation in those other member states.

In the wake of Brexit, Ireland has successfully positioned itself as a gateway to Europe, and is now the only common law country in the EU in addition to being the EU's only predominantly English-speaking member. Major financial institutions such as JP Morgan and Barclays expanded their presence in Ireland post-Brexit in order to preserve their European businesses. Dublin remains one of the most popular destinations for staff relocations and new European hubs or offices for financial services firms.

The Central Bank of Ireland (**CBI**) is the competent authority in Ireland responsible for the authorisation and supervision of MiFID investment firms. The CBI is an independent and experienced regulator which takes a risk-based approach to supervision. It currently regulates more than 10,000 entities both in Ireland and overseas, including approximately 100 MiFID investment firms authorised in Ireland. The CBI has acknowledged the growing complexity of business models in the sector and continuously seeks to engage with firms on topics such as technological innovation, new service offerings and governance and risk.

Ireland opted not to gold-plate the MiFID II obligations when transposing them into national law and the CBI tends to adopt the policy decisions, opinions and guidance of the European Securities and Market Authority (**ESMA**) without modification.

The Irish Financial Services Centre (**IFSC**), established in 1987, has led to Dublin becoming one of the leading financial services centres in Europe, with a particularly strong investment funds industry. In addition, 17 of the top 20 global banks and 11 of the top 15 insurance companies have a presence in Ireland along with 8 of the top 10 global aviation lessors and over 60% of the world's leased commercial aircraft are owned or managed from Ireland[2]. Ireland also benefits from a thriving FinTech sector. With an open, outward-looking economy, Ireland offers investment firms a stable regulatory environment and a competitive corporate tax rate of 12.5%. The Irish workforce is highly educated with above average attainment of tertiary education, and Ireland's membership of the EU offers unfettered access to skilled workers across the EU.

As Europe's legal and regulatory landscape for investment firms evolves, Ireland offers an attractive location to both establish and grow an investment firm.

2 Report entitled "Focus on International Financial Services & Fintech December 2018" issued by the Department of Business, Enterprise and Innovation, Government of Ireland.

2. THE REGULATORY FRAMEWORK

The Markets in Financial Instruments Directive (Directive 2014/65/ EU) (**MiFID II**) and the Markets in Financial Instruments Regulation (Regulation 600/2014/EU) (**MiFIR**) provide the legal and regulatory framework for securities markets, trading venues and the provision of investment services in the EEA.

MiFID II took effect in Ireland on 3 January 2018 with the enactment of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) (**Irish MiFID Regulations**). MiFIR took direct effect in Ireland on the same date. Both sets of regulations are supplemented by various delegated regulations, technical standards and guidance, both at EU and at domestic level.

3. WHAT TYPES OF INVESTMENT SERVICES ARE IN SCOPE?

The Irish MiFID Regulations apply to 'investment firms', which are broadly defined as firms whose regular occupation or business is the provision of one or more specified investment services to third parties and/or the performance of one or more specified investment activities on a professional basis. These specified services and activities are set out below.

The reception and transmission of orders in relation to one or more financial instruments.

Underwriting of financial instruments or placing of financial instruments on a firm commitment basis.

Portfolio management in accordance with mandates given by clients on a discretionary client-by-client basis where the portfolios include financial instruments.

Dealing on own account, i.e. trading against proprietary capital resulting in the conclusion of transactions in financial instruments.

Investment advice.

Operation of a multilateral trading facility (MTF).

Underwriting of financial instruments or placing of financial linstruments on a firm mcommitment basis.

Operation of an organised trading facility (OTF).

Placing of financial instruments without a firm commitment basis.

Execution of orders on behalf of clients.

The list of MiFID financial l instruments includes equities, bonds, derivatives, units in investments funds, money-market instruments and emission allowances.

An authorised investment firm may also provide certain ancillary services, including acting as custodian, granting credit in relation to transactions in financial instruments and corporate finance advice.

A firm may be an investment firm for the purpose of MiFID even if it does not provide investment services to others if, for example, it trades in MiFID financial instruments for its own account on a professional basis.

4. THE MIFID PASSPORT

An Irish investment firm which is authorised to provide certain investment services in Ireland is entitled to provide those services in any member state of the EEA. The firm is required to notify the CBI of its intention to passport its services/ activities to another member state before doing so.

In the same way, a firm authorised to provide investment services in another EEA member state may provide those investment services in Ireland without authorisation from the CBI but must notify its home state regulator before passporting any of its services/activities into Ireland.

5. PROVIDING INVESTMENT SERVICES FROM OUTSIDE THE EEA

MiFID also applies to firms established in jurisdictions outside the EEA (**Third Country Firms**) when providing investment services and/or activities in the EEA, including through an EEA branch.

There are specific rules relating to the access rights of Third Country Firms who wish to provide cross-border investment services into the EEA. Such activity is permitted only in certain limited circumstances and only to certain categories of investors.

An investment firm authorised as a Third Country Firm may benefit from the Irish "safe harbour" provided for under the Irish MiFID Regulations, allowing it to offer MiFID investment services to 'per-se professional clients' and 'eligible counterparties' in Ireland without needing to be authorised in Ireland. In order for the Third Country Firm to avail of this "safe harbour" the following requirements must be met:

- the Third Country Firm's head or registered office must be in a non-EEA member state and it must not have a branch in Ireland;
- the Third Country Firm must be subject to authorisation and supervision in the third country in which it is established and the relevant competent authority of the third country must pay due regard to any recommendations of the Financial Action Task Force (**FATF**) in the context of anti-money laundering and countering the financing of terrorism; and
- co-operation arrangements must be in place between the CBI and the competent authorities of the third country that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors.

Separate to the Irish "safe harbour", MiFIR established an EU-wide right for a Third Country Firm to provide investment services or perform investment activities to professional clients and eligible counterparties, without establishing a branch, provided that the firm is registered in the register of Third Country Firms maintained by ESMA. In order to be included on the register a firm must meet a number of requirements. In particular, the European Commission must have adopted an equivalence decision in relation to the legal and supervisory arrangements in place in the third country.

A Third Country Firm which wishes to provide services to retail consumer clients is required to establish an EEA branch and to obtain regulatory authorisation for the branch to provide those services, unless the services are provided at the exclusive initiative of the client ('reverse solicitation').

6. REGISTER OF AUTHORISED INVESTMENT FIRMS

The CBI is required to maintain a publicly accessible register of authorised investment firms. This register appears on the CBI's website, accessible here.

7. THE AUTHORISATION PROCESS

7.1. BEFORE STARTING THE PROCESS

There are a number of steps a firm should take before deciding to make an application for MiFID authorisation in Ireland.

- **Step 1 –** Determine whether the firm requires authorisation under the Irish MiFID Regulations.
- **Step 2 –** Determine if the activities in Ireland require authorisation by the CBI or if the business can passport its authorisation from another EEA Member State.
- **Step 3 –** If authorisation from the CBI is required, the firm should consider the CBI's authorisation requirements fully to ensure that these can be met.
- **Step 4 –** The firm should also consider the ongoing operational and conduct of business requirements that will be imposed on it as an authorised investment firm in Ireland and ensure that these can be adhered to.

7.2.APPLICATION PROCESS

There are three stages to the authorisation application process.

Stage 1: Preliminary meeting

The CBI will require the applicant firm to meet with it to discuss the firm's business and the proposal to seek authorisation in advance of an application being made. A meeting request should be sent by the applicant firm to the CBI, setting out at a high level the proposed authorisation being sought.

At the preliminary meeting the applicant will be informed of the CBI's authorisation process and timeframes, and of any significant issues that are apparent to the CBI that might negatively impact the CBI's determination of the application.

The applicant firm is required to submit a presentation and a list of attendees five business days in advance of the CBI meeting. The presentation should be reasonably high level but include the following:

- An outline of the purpose of the meeting;
- High level background information on the applicant firm and the shareholders/the group (as applicable);
- Rationale for authorisation application and for selecting this jurisdiction (Brexit, etc.);
- Proposed activities and business model;
- List of services and instruments being sought under the Irish MiFID Regulations;
- Description of the products and services to be provided by the applicant firm and the rationale for the proposed activities;
- Proposed business lines and proposed scale and location of the business operations;

- Proposed passporting;
- Applicability of MiFIR Transaction Reporting and Client Asset Regulations;
- Details on the projected client base (e.g., client numbers, top five client juris-dictions);
- Revenue and Regulatory Capital projections Year 0, 1, 2, 3;
- Details on funding (e.g., source(s) and level of funding, confirmation of stability of funding);Governance and staff arrangements;
- Description of internal control functions (e.g., a high level overview of the risk and compliance framework and the internal audit framework proposed);
- Details of any proposed outsourcing arrangements;
- The applicant firm's expectations regarding authorisation process, timelines, and next steps; and
- Any other information that the applicant firm considers pertinent.

Stage 2: Key Facts Document (**KFD**)

After the preliminary meeting, the applicant firm will be invited to submit a KFD to the CBI. The information that is required to be included in the KFD is set out below. The applicant firm should also ensure that the KFD addresses any issues raised by the CBI during the preliminary meeting.

1	**An introduction addressing the purpose, scope and rationale for authorisation application.**
2	**Brief background of the applicant firm.**
3	**Business Model** a) An overview of the business model/strategy of the applicant firm; b) Details of the products and services to be provided; c) Anticipated assets under management/advice for the first 3 years; d) Mapping of core services, ancillary services and financial instruments to be offered with reference to Schedule 1 of the Irish MiFID Regulations services and instruments; e) Mapping of any services and instruments required by the firm under the Investment Intermediaries Act (IIA) 1995; f) Details of the freedom of services / freedom of establishment proposal, if applicable; g) Description of the applicant firm's three lines of defence (exhibiting independence of internal control functions); h) An overview of the applicant firm's compliance framework; i) An overview of the applicant firm's risk framework; j) An overview of the firm's internal audit framework; k) The amount, type and rationale for outsourcing of core and shared services should be provided. This should include the detail of proposed delegates and sub delegates, due diligence carried out on said delegates, Service Level Agreements etc.; l) Market abuse monitoring and reporting: if applicable, provide details of the policies, procedures and resources the firm will have in place in order to meet their monitoring and reporting obligations under the Market Abuse Regulation (EU) 596/2014 and related legislation; m) Indicate the firm's transaction reporting requirements and if applicable, the number of daily transactions to be reported to the CBI; and n) Explain the nature, scale and complexity of the information technology requirements to conduct business (whether in-house or outsourced to a group entity and explain how information technology will be resourced).

4	**Client Assets** a) Whether the applicant firm proposes holding client assets and anticipated level of assets (if applicable). b) The arrangements the applicant firm propose to establish to manage client assets in accordance with Client Asset Regulations.
5	**Clients** a) Who the clients are (i.e., institutional, CIS, individuals); b) Type (retail, professional, eligible counterparty); c) Number and type of clients in each of the first three years of operation; d) The rationale and basis for the applicant firm's estimates and variations year on year; e) Applicability of the Investor Compensation Scheme to the firm's activities; and f) Applicability of the Minimum Competency Code 2017 to the firm's activities.
6	**Governance & Staff Resourcing Arrangements** a) Qualifying Shareholders; b) Full Ownership structure chart; c) Overview of governance arrangements (e.g., the governance structure chart, committee structure); d) Organisational chart depicting all staff members, including their locations, functional units, clear reporting lines, overlapping functions, committees and subcommittees, PCF and CF roles, senior management roles, any outsourced/seconded employees/functions; e) Pre-Approval Controlled Functions for board members and senior staff, including whether these individuals have previously been approved by the CBI (Board and Senior Management); f) Time allocation for the proposed PCF roles; and g) Number of FTE employees, whether any are shared with other group entities and where staff are part-time, how they are otherwise employed.
7	**High-Level Capital Projections for the First 3 Years (i.e., Year 0, Year 1, Year 2, Year 3)** a) Determine which class of investment firm the applicant firm belongs under IFD/IFR (i.e., Class 1, Class 2, Class 3 firm) and provide high-level overview of analysis of status; b) Provide a brief overview of the core elements of the applicant firm's proposed revenue model, clearly demonstrating how the applicant firm will be in a position to meet its applicable regulatory capital requirements and how the proposed business model is capital accretive, including: • Regulatory Capital, Own Funds Requirements and Operational Funding Levels for the first 3 years; • Profit and Loss Accounts, including turnover (total income/revenue generated) for the first 3 years; • Balance Sheet for the first 3 years; • Profitability and source of revenue; and • Sources of Regulatory and Share Capital/Funding. c) Confirmation that the applicant firm has produced and/or is capable of producing an ICAAP, ILAAP, as applicable.
8	**Requests for Permission, Derogation or Use of a Waiver under Relevant Legislation** a) Notification of an intention to apply for permission, derogation or use of a waiver under relevant legislation, if applicable.

9	**Application Submission Timeline** a) Indication of when the applicant firm will be in a position to submit its application for authorisation.

The KFD must clearly and precisely address each point. The CBI will review the completed KFD and revert to the applicant firm in writing with any comments. If the KFD does not contain, or is deficient in relation to, the information required it will not be considered and the applicant firm will be asked to revise and resubmit the KFD with the appropriate level of detail.

Stage 3: Submission of formal application and supporting documents

Following submission of the KFD, the applicant firm will be invited to submit a complete application. The application process requires the following documentation to be submitted to the CBI:

- Fully completed and signed Application Form;
- A Programme of Operations which must include details of each of the following:
  - business strategy along with a business model that illustrates the regulated investment services to be provided to clients;
  - high level overview of any unregulated activity to be carried out (if applicable);
  - organisational structure chart along with staff numbers, their roles, responsibilities and reporting lines, Pre-Approval Controlled Functions (**PCFs**) and details of their experience; and
  - corporate governance arrangements, e.g., board of directors, committees (if any);
- Fully completed Individual Questionnaires (**IQs**) for all PCFs and hard copy IQs for individual qualifying shareholders;
- Shareholder information including group structure and required supporting documentation;
- Financial projections for the first 3 years of operation (with detailed notes explaining each line item). This must include:
  - P&L and balance sheet for the first three years (year 1 of the P&L account to be in monthly format);
  - Audited accounts and latest management accounts, where applicable;
  - Regulatory capital calculations for first three years; and
  - Details of any charges, guarantees, indemnities or other security to third parties;

- Required client asset documentation, where applicable; and
- Arrangements for both the orderly and forced winding down of the firm which ensures the protection of client assets and fair treatment of clients.

The CBI will return an application to an applicant firm if it is incomplete, setting out why it regards the application as incomplete. Upon receipt of a complete formal application, the CBI will issue an acknowledgement of receipt to the applicant firm.

7.3. TIMING

Following receipt of a complete formal application, the CBI will engage with the applicant firm to set out the expected timeframe by which initial and subsequent comments will issue to the applicant firm, and will set out the corresponding timelines for responses by the applicant firm.

Where the applicant is in a position to respond to comments and progress the application without delays then the CBI will typically make a decision on the application within six months of receipt of the complete application. Where further information or records have been requested by the CBI in relation to the application, a determination will be made within 6 months after the receipt by the CBI of the further information or records. Better prepared, more detailed submission documents tend to reduce the duration of the authorisation process.

7.4. THE CBI'S APPROACH TO THE AUTHORISATION PROCESS

The CBI is knowledgeable and experienced and conducts a robust and thorough process. Like all European regulators the CBI is heavily influenced by ESMA and tends to adopt the policy decisions, opinions and guidance of ESMA without modification.

The CBI operates a risk-based system of regulation in Ireland called the Probability Risk Impact System (**PRISM**) which ranks firms as low, medium–low, medium, medium–high, and high based on the risks they pose to the economy and the consumer. Supervisory resources are allocated according to risk. A firm's anticipated PRISM rating has an impact on the approach which the CBI will take to the firm's application, with higher-risk rated firms receiving a higher degree of scrutiny and smaller, less complex firms generally experiencing a less intrusive and shorter process.

8 . CONDITIONS OF AUTHORISATION

8.1. CONSTITUTION

Typically an investment firm applying for authorisation will be constituted as a private company limited by shares, although there are a number of other acceptable forms of constitution for an applicant.

Incorporating a company in Ireland is a relatively straightforward process. It typically takes approximately 15 days but can be done quicker where necessary. Certain documents need to be filed with the Irish Companies Registration Office. These

includes details about the proposed shareholders, directors and company secretary of the company, and written consent of the directors and company secretary acknowledging their legal obligations.

8.2. CAPACITY TO PROVIDE INVESTMENT SERVICES

The proposed investment firm's constitutional documents must give the investment firm sufficient capacity to conduct investment services/ activities in accordance with the Irish MiFID Regulations and with any conditions and requirements imposed by the CBI.

8.3. CAPITAL REQUIREMENTS

The proposed investment firm must have sufficient initial capital and ongoing 'own funds' in line with the applicable regulatory requirements. A new prudential regulatory regime for investment firms, in the form of the Investment Firms Regulation (EU) 2019/2033 and the Investment Firms Directive (EU) 2019/2034, came into effect on 26 June 2021.

8.4. SUBSTANCE REQUIREMENT – 'HEART AND MIND'

The head office of the investment firm must be physically located in Ireland. In addition, the applicant's 'heart and mind' must be located in Ireland. This means that the strategic direction of the firm, key decision making and risk management should be governed and controlled from within the Irish head office. The CBI will not authorise a shell or 'letter box' entity and must satisfy itself that it will be in a position to effectively supervise the entity.

The CBI will expect to see:

- decision-making at Board and committee level takes place within Ireland;
- significant senior management presence in Ireland; and
- financial control, legal and compliance, and risk management functions located within the head office.

There is no requirement for any specific individual to be resident in Ireland but the CBI will generally expect the individuals carrying out the applicant's core functions to operate in Ireland.

8.5. BOARD OF DIRECTORS

The CBI requires the board to have a balance of executive and non- executive directors. Firms will be required to have at least one independent non-executive director. The CBI must be satisfied as to the probity and competence of the directors of the applicant. See below in Section 8.8 under "Fitness and Probity".

8.6. SUITABILITY OF QUALIFYING SHAREHOLDERS

The CBI must be satisfied as to the suitability of each of the qualifying shareholders of the proposed investment firm. A qualifying shareholding for these purposes is a direct or indirect holding in the firm which represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise a significant influence over the management of the investment firm.

Full details need to be provided, including group structure charts, details of all regulated entities in the group, accounts for all entities in the ownership chain and evidence showing ownership of each entity in that chain.

8.7. ORGANISATIONAL STRUCTURE AND STAFFING

The CBI must be satisfied as to the organisational structure and management skills of the proposed investment firm and that adequate levels of staff and expertise will be employed to carry out the investment firm's proposed activities.

8.8. FITNESS AND PROBITY

The CBI operates a fitness and probity regime for persons performing a PCF or a Controlled Function (**CF**) in regulated firms. The fitness and probity standards relate to competence, capability, honesty, integrity and financial soundness.

PCF roles include those of director, chief executive and the heads of finance, compliance, internal audit, risk, etc.

Any person who performs a PCF role in an authorised investment firm must be approved by the CBI in advance of his/her appointment. A detailed questionnaire must be completed and submitted to the CBI.

8.9. MINIMUM COMPETENCY

The CBI's Minimum Competency Code imposes minimum competency standards on persons exercising certain functions, including persons providing advice or information on, or arranging or offering to arrange, MiFID investment products and certain MiFID services to or for retail clients and elective professional clients.

8.10. REMUNERATION

Investment firms are required to implement remuneration policies which are consistent with applicable remuneration requirements. Depending upon the scale and complexity of the firm, requirements may apply to bonuses, payment in shares, deferral, clawback, etc. Larger firms may also be required to establish a remuneration committee.

9. ORGANISATIONAL REQUIREMENTS

The Irish MiFID Regulations apply high-level organisational requirements to investment firms. Some of the key requirements are summarised below.

9.1. COMPLIANCE PROCEDURES

The investment firm must establish adequate policies and procedures sufficient to ensure its compliance with its relevant obligations.

9.2. CONFLICTS OF INTEREST

The investment firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify potential conflicts of interest and take steps to prevent these conflicts adversely affecting the interests of its clients. If a conflict of interest cannot be prevented, the investment firm must disclose the nature and/or sources of the conflict of interest to the client before undertaking the business.

9.3. BUSINESS CONTINUITY

The investment firm must ensure continuity and regularity in the performance of investment services and activities by implementing and carrying out appropriate and proportionate systems, resources and procedures.

9.4. RISK MANAGEMENT

Firms are required to establish, implement and maintain adequate risk management policies and procedures, to adopt processes and arrangements to manage those risks and to monitor compliance with those risk policies and procedures.

An independent risk management function is envisaged where it is proportionate and appropriate in light of the nature, scale and complexity of the investment firm's business. Reports on internal controls and risk management should be provided to senior management on a periodic basis.

The investment firm must have in place and use (i) sound administrative and accounting procedures and internal control mechanisms, (ii) effective risk assessment procedures, and (iii) effective control and safeguard arrangements for information processing systems.

The investment firm must take reasonable steps to avoid undue additional operational risk when relying on third parties for the performance of certain operational functions.

9.5. OUTSOURCING

The investment firm must ensure that any outsourcing of important operational functions is not undertaken in such a way as to impair materially: (i) the quality of the firm's internal control, or (ii) the ability of the CBI to monitor the firm's compliance with its relevant obligations.

When outsourcing operational functions that are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, an investment firm must take reasonable steps to avoid undue additional operational risk. In addition to the MiFID requirements on outsourcing, investment firms may be subject to various additional regulatory requirements and guidelines applicable to their outsourcing arrangements, such as those set out in the European Banking Authority's Guidelines on Outsourcing Arrangements, ESMA's Final Report on Guidelines on Outsourcing to Cloud Services Providers and the CBI Cross-Industry Guidance on Outsourcing.

9.6. RECORD RETENTION

The investment firm must keep records of all services and transactions undertaken and ensure that the records are sufficient to enable the CBI to monitor the firm's compliance with its requirements and, in particular, to ascertain whether the firm is complying with its obligations with respect to clients or potential clients.

9.7. SAFEKEEPING OF FINANCIAL INSTRUMENTS AND CLIENT MONEY

When holding financial instruments belonging to clients, the investment firm must make adequate arrangements to (i) safeguard clients' ownership rights, especially in the event of the firm's insolvency, and (ii) prevent the use of a client's instruments on own account, except with the client's express consent.

When holding funds belonging to clients, the investment firm must make adequate arrangements to safeguard the clients' rights and prevent the use of client funds for the investment firm's own account.

9.8. THE COMPLIANCE FUNCTION

Firms are required to monitor and evaluate the adequacy and effectiveness of their systems and internal controls on a regular basis and take appropriate measures to address deficiencies. This must include maintaining a permanent, independently operating compliance function.

ESMA's 'Guidelines on certain aspects of the MiFID II compliance function requirements', published on 5 June 2020, contain detailed requirements in relation to the compliance function of investment firms.

9.9. INTERNAL AUDIT

A separate internal audit function may be required to be established and maintained where it is proportionate and appropriate in light of the nature, scale and complexity of the investment firm's business.

9.10. COMPLAINTS

Firms are required to maintain effective and transparent procedures for the reasonable and prompt handling of complaints and to keep records of such complaints and their resolution.

10. CONDUCT OF BUSINESS REQUIREMENTS

Irish authorised MiFID firms are required to comply with a range of EU and domestic conduct of business requirements. Some of the most significant conduct of business requirements are set out below.

10.1. CLIENT CLASSIFICATION

All clients must be classified as either: (i) retail clients; (ii) professional clients; or (iii) eligible counterparties and must receive specific information depending on their classification.

Retail Clients: By default, clients who are neither eligible counterparties nor professional clients are deemed to be retail clients. Most natural persons will fall into this category. Retail clients enjoy the highest level of protection.

Professional clients: These are certain financial institutions, market operators, large businesses which conform to balance

sheet/turnover criteria, and others. The obligations owed to professional clients are more limited.

Eligible Counterparties (ECPs): These are a subset of professional clients who operate in the financial sector. Certain obligations concerning information provision, best execution requirements, prompt, fair and expeditious execution of client orders etc., will not apply to transactions with ECPs.

An investment firm is required to notify clients of their right to request a different categorisation in certain circumstances and about any limitations on the level of client protection that different categorisations entail.

10.2. INFORMATION TO CLIENTS

Investment firms are required to provide appropriate information to clients in good time relating to the firm and its services, including its financial instruments, proposed investment strategies, execution venues and all costs and related charges.

For example, when a firm provides investment advice, it must, in good time before it provides the advice, inform the client:

(a) whether or not the advice is provided on an independent basis;

(b) whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the firm or any other legal or economic relationship so close as to pose a risk of impairing the independent basis of the advice provided; and

(c) whether the firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client.

Additional requirements apply when the firm provides independent investment advice.

10.3. BEST EXECUTION

Investment firms must take reasonable steps when executing orders to ensure the best possible result for their clients, taking account of price, cost, speed, likelihood of execution and settlement, size, nature, and any other consideration relevant to the execution of an order.

Investment firms must establish and implement an 'order execution policy' designed to ensure the best result for the client. Firms must also provide appropriate information to their clients regarding the order execution policy and obtain the prior consent of their clients to the policy.

Firms are required to monitor the effectiveness of their order execution arrangements, including execution venues and

execution policy, to achieve best execution opposed to any alternatives, on at least an annual basis. Firms are required to advise customers of any material changes to their order execution policy or arrangements.

10.4. SUITABILITY AND APPROPRIATENESS

Firms are required to perform a suitability assessment when providing investment advice or portfolio management. An investment firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of product or service;

(b) financial situation, including the client's ability to bear losses; and

(c) investment objectives, including the client's risk tolerance,

to enable the firm to recommend the investment services and financial instruments that are suitable for the client and, in particular, are in accordance with the client's risk tolerance and ability to bear losses.

Where an investment firm provides investment services other than portfolio management and investment advice, it must ask the client to provide information about that person's knowledge and experience in the investment field relevant to the specific type of product or service to enable the firm to assess whether the product or service is appropriate.

11. TAXATION

11.1. GENERAL

Investment firms are generally subject to corporation tax at 12.5% which positions Ireland well for the passporting of services across the EEA.

Ireland also has a "substance" focused transparent tax regime aligned to the OECD BEPS principles and is therefore robust from a European and Global Tax perspective.

11.2. IRISH CORPORATE TAX RATES

Ireland offers an attractive taxation regime for investment firms with the firm being taxed at either 12.5% or 25% on its profits.

For investment firms, typical profits qualifying for the 12.5% tax rate would be fee income and income arising from an investment of the investment firm's minimum regulatory capital requirements. An investment by the investment firm in a regulated fund which it manages may also qualify for the 12.5% tax rate.

Typically passive income (non-trading income) will be taxable at the higher corporate tax rate of 25% and non-trading capital gains taxable at 33%. Other incentives that may be relevant are Ireland's R&D regime, IP Regime, as well as an extensive double tax treaty network, with 74 signed treaties, 73 of which are currently in force.

11.3. REPATRIATION OF AFTER-TAX PROFITS

An investment firm can generally make dividend payments free of Irish dividend withholding tax (**DWT**).

There are several exemptions from DWT provided that the recipient is resident in an EU Member State or in a country with which Ireland has concluded a double tax treaty or in a country with which Ireland has signed but not yet ratified a double tax treaty (**Qualifying Country**), or in the case of a non-resident investment firm, even where it is not resident in a Qualifying Country, an exemption will apply provided it is controlled by persons resident in a Qualifying Country, and in certain other cases.

With the exception of a subsidiary company relying on the EU Parent- Subsidiary Directive (when making a payment to an EU parent), in all of the cases the persons must make a declaration in a specific format laid down in the legislation in order to avail of the above exemptions (i.e. no declaration is required if a company is relying on the EU Parent-Subsidiary Directive). If there are no changes in circumstances the exemption should remain operative for five years. Please note that on the making of a relevant dividend to which one of the above exemptions applies (including the EU Parent-Subsidiary Directive)

it is still necessary to complete and file a nil DWT form with the Irish Revenue Commissioners by the 14th day of the month following the month in which the dividend is made (i.e. a return is required to be made with the Irish Revenue Commissioners even in the event where nil withholding tax applies).

Where a shareholder receives a distribution on liquidation such a distribution is not regarded as a dividend and instead may be subject to capital gains tax in the hands of the shareholder. It is however very unlikely that such a distribution to a non-resident shareholder would attract a liability to Irish capital gains tax given the fact that a liability to such only arises on shares deriving their value from Irish minerals or mining rights or from Irish property.

11.4. TRANSFER PRICING

Ireland introduced transfer pricing legislation in 2010 which was substantially updated in 2020. The legislation seeks to increase understated receipts and reduce overstated expenses of companies and branches in Ireland. The sole aim of the legislation is to increase profits which have been understated in Ireland (not normally a common occurrence with a corporate tax rate of 12.5%).

Small or medium-sized enterprises currently continue to be exempt from the transfer pricing measures. However, the exemption for both will cease on the signing of a Ministerial Order. Such Ministerial Order can be signed anytime in the future although no such Ministerial Order is expected to be signed any time soon while there continues to be disruption and uncertainty caused by Covid-19 and Brexit. For the purpose of this exemption a person is regarded as a "small or medium-sized enterprise" if they fall within the definition of "micro, small and medium-sized enterprises" as outlined in the Annex to the Commission Recommendations of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. This essentially excludes an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million. These figures are assessed, where appropriate, on a worldwide group wide basis.

11.5. VAT

To the extent an investment firm is providing services to clients located outside of Ireland then it will have full VAT recovery in respect of any VAT input costs that incur in respect of activities directly attributable to the provision of such services. To the extent an investment firm incurs VAT on input costs in respect of the provision of VAT exempt services to clients located in Ireland, the extent to which it can recover VAT will depend on whether such services are a VAT exempt service (and even if VAT exempt, there may be a VAT recovery entitlement).

11.6. PERSONAL TAX REGIME FOR EXECUTIVES

In certain cases carried interest will be taxable at a 12.5% or 15% tax rate instead of the normal capital gains tax rate of 33%. Ireland, like the UK, has the concept of 'non-doms' and consequently it may be attractive for some investment firms' employees to be tax resident in Ireland to the extent they have significant non-Irish income and gains. Likewise, 'non-doms' can remit income and gains to Ireland tax-free which have been earned in the period before they move to Ireland.

There are also special tax reliefs for individuals moving to Ireland known as the Special Assignment Relief Programme (**SARP**) which can reduce an individual's effective tax rate for five consecutive tax years. SARP provides for income tax relief

on a proportion of income earned by an employee who is assigned by his or her relevant employer to work in Ireland for that employer or for an associated company in Ireland of that relevant employer. A relevant employer is a company that is incorporated and tax resident in a country with which Ireland has a double taxation agreement or a tax information exchange agreement. Where certain conditions are satisfied, an employee can make a claim to have a proportion of his/her earnings from the employment with the relevant employer or with an associated company disregarded for income tax purposes. In addition, employees who qualify for relief under this section may also receive, free of tax, certain travel expenses and certain costs associated with the education of their children in Ireland.

11.7. PROTECTION FROM IRISH TAX CHARGE FOR NON-IRISH CLIENTS

An offshore client's activities may give rise to an Irish tax liability through the activities of an Irish investment firm. Ireland's domestic investment manager exemption regime provides a protection against such a tax charge arising, subject to satisfying certain conditions. In addition, reliance may be able to be placed on Ireland's extensive double tax treaty network (the independent agent article of the relevant tax treaty) to avoid an investment firm creating a taxable presence on behalf of a client located outside of Ireland.

12 . HOW DILLON EUSTACE CAN HELP

OUR EXPERIENCE

Dillon Eustace is internationally recognised as one of Ireland's leading financial services law firms.

We act for a range of industry participants, including asset managers, broker-dealers, investment banks, fund administrators, CFD providers, spread betting firms, pension consultancies, placing agents, crypto- asset service providers and intermediaries. Many of our clients chose Ireland as a strategic base from which to serve a wider European client base or have exported their European based business to Ireland.

REGULATORY ADVICE AND ASSISTANCE WITH AUTHORISATION APPLICATIONS

Our Financial Regulation team can advise on all aspects of MiFID and its application to firms providing investment services in Ireland, including:

- the establishment and authorisation of new investment business in Ireland – including advising on high level strategic matters, scope and application of the Irish MiFID Regulations, co- ordination of application for authorisation including assistance/ guidance in the completion of the CBI's application form and the firm's Programme of Operations, and advice on implementation of policies and procedures for compliance with ongoing

organisational and conduct of business requirements;

- cross-border passporting;
- capitalisation and capital adequacy requirements;
- drafting/reviewing all contracts, terms of business, policies and procedures manuals etc.;
- liaising with the CBI on your behalf on all aspect of MiFID-related business and applications for authorisation; and
- on-going legal and regulatory advice and support.

CORPORATE AND COMPANY SECRETARIAL

Our Corporate Department can provide a full range of corporate law support on an ongoing basis, including advice in relation to commercial contracts, corporate governance, etc. We also provide a comprehensive company secretarial service.

REAL ESTATE

Our Real Estate Department can assist in all aspects of property law, such as the letting of business premises.

EMPLOYMENT

Our Employment Law team advises a wide range of clients, both domestic and overseas, from start-ups to employers with hundreds of employees, in a wide variety of sectors from financial services to manufacturing in relation to all aspects of the employment relationship from recruitment through to contracts and policies to termination issues.

TAXATION

Our Tax Department can advise in relation to all relevant Irish tax matters affecting your business.

For more details on how we can help you, to request copies of our most recent newsletters, briefings or articles, or to be included on our mailing list, please contact us.

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