

# How to set up a Management Company in Ireland

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# How to set up a Management Company in Ireland

Introduction

January 2024

**EU Law provides that an entity which manages an EU based Undertaking for Collective Investment in Transferable Securities (UCITS) and, with some exceptions<sup>1</sup>, an EU based alternative investment fund (AIF), requires an authorisation to do so. Equally an entity that seeks to market an AIF within the EU requires authorisation to do so.**

In this “How to” guide, we aim to give you an overview of what a UCITS ManCo and/or AIFM can do, who can be a UCITS ManCo and/or AIFM, and of the applicable Irish regulatory regime.

If you have any questions, please contact us.

**Dillon Eustace Asset Management  
and Investment Funds Team  
January 2024**

This guide will be of particular relevance for fund promoters looking to:

- set up or manage a UCITS or AIF in Europe for the first time; or
- find a suitable EU jurisdiction from which to co-ordinate EU wide fund management activities; or
- compare stand-alone UCITS or AIF options against third party UCITS or AIF platform options.

<sup>1</sup> Regulation 4 of the European Union (Alternative Investment Fund Managers) Regulations, 2013 (AIFMD Regulations)





**1.** What is a Management Company and what can it do?



## 1. What is a Management Company and what can it do?

EU law provides that an entity which manages an EU based UCITS requires an authorisation to do so. Such an entity is known as a UCITS ManCo. The authorisation that such a UCITS ManCo requires is one under Directive 2009/65/EC as amended (the **UCITS Directive**) which has been implemented in Ireland by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as amended (the **UCITS Regulations**).

Equally an entity which either seeks to manage an EU based alternative investment fund (**AIF**) or market an AIF to professional investors within the EU requires an authorisation to do so and is known as an alternative investment fund manager or AIFM. The authorisation of AIFMs is governed by a separate suite of legislation to that of UCITS, namely Directive 2011/61/EU as amended (**AIFMD**), which has been implemented in Ireland by the European Union (Alternative Investment Fund Managers) Regulations, 2013 as amended (**the AIFMD Regulations**). An AIFM can manage both EU based AIFs and Non-EU AIFs and can market them to professional investors in the EU either using a marketing passport or, if available, a private placement regime.

These rules are further supplemented by regulations and related guidance issued by the Central Bank of Ireland (**Central Bank**<sup>2</sup>).

Reflecting a trend for consolidating both fund domicile and management company jurisdictions, Ireland is now home to many UCITS ManCos, AIFMS, firms authorised under Directive 2014/65/EU – Markets in Financial Instruments Directive II (“**MiFID**”) and the increasingly common dual AIFM/UCITS ManCo often referred to as the “**Super ManCo**” and those Super ManCos with additional MiFID top up permissions now referred to as the “**Mega ManCo**”.

In the following sections, we summarise the steps to establishment of such UCITS ManCos, AIFMs, Super ManCos and Mega ManCos and what each can do.

### 1.1 What is a Management Company?

In the fund management industry, particularly when dealing with collective investment schemes, the terms “Management Company” and “Investment Manager” have had different meanings, different functions and different passports. These distinctions can at times become blurred but it is important to understand which entities we are referring to when we use those terms, as explained further below.

When we refer to a “Management Company”, we are referring to the entity which has the ultimate responsibility for the overall management of a collective investment scheme. This overall management function encompasses overall control of the collective investment scheme, including the discretionary investment management function, the fund administration function and the distribution function and is referred to generally as “collective portfolio management”.

When a collective investment scheme is established in Ireland whether as a UCITS or AIF, the contractual arrangements are structured so that the Management Company is mandated to carry out investment management, fund administration and marketing/distribution in respect of the Irish collective investment scheme but, in most cases, the Management Company delegates out fund administration to a regulated administrator and delegates the distribution activity to a global distributor and/or a number of distributors in the jurisdictions where the collective investment scheme is being distributed. Some

<sup>2</sup> Including without limitation the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) Regulations, 2019 as amended and the Central Bank’s AIF Rulebook

Management Companies carry out significant asset management activities as well as distribution and we are seeing an increasing number of authorised Mega ManCos which also provide individual portfolio management services to clients. In many other cases, the Management Company delegates portfolio management activity to an appropriately regulated investment manager which, if it is a European entity, would most likely be authorised in its home EU Member State under MiFID, the UCITS Directive or AIFMD.

## 1.2 What can a Management Company do?

A UCITS ManCo's primary role is to act as the manager of UCITS type collective investment schemes. Such a UCITS may be domiciled in Ireland or elsewhere within the EU, with the result that an Irish domiciled UCITS ManCo may be the manager to UCITS domiciled in Ireland, Luxembourg, Malta etc.

A UCITS ManCo may also act as manager of non-UCITS type collective investment schemes provided it is subject to prudential supervision for such additional management activities. Although as a result of the introduction and implementation of AIFMD, a UCITS ManCo which does not have a dual authorisation as referred to in paragraph 1.3 below may not act as the AIFM of AIFs, it is possible for a UCITS ManCo to also act as a non-AIFM manager of such AIFs. For example some Irish authorised UCITS ManCos also act as the management company to Irish authorised AIFs structured as unit trusts or common contractual schemes where a third party acts as AIFM in those structures.

With respect to Irish authorised AIFMs, the capacity to manage or market AIFs on a cross-border basis within the EU will depend on the types and domiciles of the AIFs it manages or markets.

As the activity of management of collective investment schemes includes inter alia the administration, investment management and distribution of collective investment schemes, a UCITS ManCo or AIFM may also act as the administrator, investment manager and/or distributor (as distinct from the role of manager) of collective investment schemes (whether such schemes are UCITS funds or AIFs) provided it is subject to prudential supervision for such activities. For example some Irish authorised UCITS ManCos and AIFMs also act as the administrator or investment manager of UCITS funds / AIFs (including non-EU AIFs) for which they do not act as the UCITS ManCo / AIFM.

The above activities of a Management Company which relate to the management of collective investment schemes are sometimes referred to specifically as "**collective portfolio management**".

A UCITS ManCo or AIFM may also extend its authorisation beyond collective portfolio management to include acting as discretionary investment manager for other types of non-fund investors in relation to individual portfolios of investments (sometimes specifically referred to as "**individual portfolio management**") and may also act as an investment adviser to different types of clients. However, as the activity of individual portfolio management is an investment service under MiFID, UCITS ManCos and AIFMs which extend their authorisation to carry out this activity are subject to certain MiFID requirements such as those relating to capital, organisation requirements and conduct of business obligations. A UCITS ManCo may also be authorised to provide the MiFID service of investment advice whilst an AIFM may also be authorised to provide the MiFID services of investment advice and receipt and transmission of orders (RTO). It is often the case that entities seeking dual authorisation as AIFM and UCITS ManCo will "top-up" their AIFM permissions so as to be able to avail of all of the extended MiFID services including RTO.

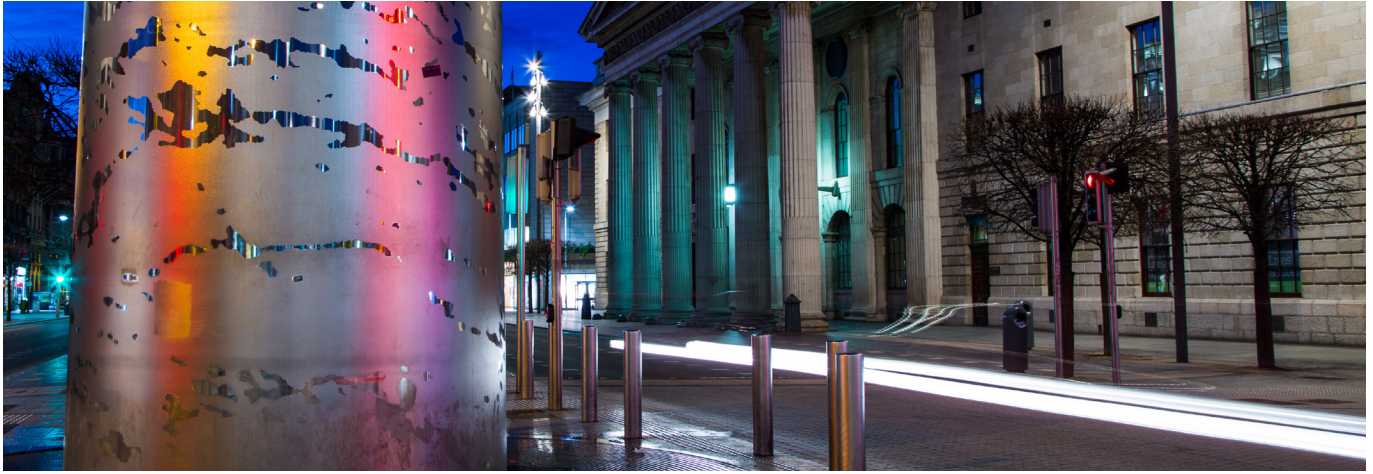
In summary, UCITS ManCos and AIFMs are able to carry out the following activities:

### Collective Portfolio Management

- (i) the management of UCITS/AIF collective investment schemes howsoever structured whether as unit trusts/ common contractual funds/investment companies/collective asset-management vehicles. This includes:
  - (a) investment management;<sup>3</sup>
  - (b) administration;<sup>4</sup>
  - (c) marketing;

<sup>3</sup> For AIFMS including (a) portfolio management and (b) risk management

<sup>4</sup> (i) legal and fund management accounting services; (ii) customer inquiries; (iii) valuation and pricing, including tax returns; (iv) regulatory compliance monitoring; (v) maintenance of unit/shareholder register; (vi) distribution of income; (vii) unit/shares issues and redemptions; (viii) contract settlements, including certificate dispatch; (ix) record keeping



- (d) in the case of AIFMs only, activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services related to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

## Individual Portfolio Management

- (ii) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary client-by-client basis<sup>5</sup> ;

## Non-Core Services

- (iii) (a) investment advice<sup>6</sup> ;
  - (b) safekeeping and administration in relation to units of collective investment undertakings; and
  - (c) for AIFMs only, receipt and transmission of orders in relation to financial instruments

It is important to note however that a Management Company may not be authorised solely to provide the services referred to in (ii) or (iii) above. Furthermore, a Management Company may only be authorised to provide the non-core services referred to in (iii) above where it is authorised for the activity referred to in (ii) above.

## Marketing

- (iv) Whilst “marketing” forms part of the collective portfolio management function for both UCITS ManCo and AIFMs one of the key differences between the two management company regimes is that the ability to market UCITS attaches to the UCITS itself whereas with AIFs, it is the AIFM that has the ability to market AIFs under AIFMD. With respect to AIFMs only, the activity of “marketing” is defined as “a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares in an AIF it manages to or with investors domiciled or with a registered office in the [European] Union”. As it says, it covers both direct and indirect offerings or placements and not only covers activities of the AIFM but also those of others such as intermediaries or placement agents acting “on behalf of the AIFM”.

In summary, the capacity to manage or market AIFs on a cross-border basis within the EU will depend on whether the AIFM is: - an EU AIFM or a non-EU AIFM; - authorised or registered; - the types and domiciles of the AIFs it manages or markets; and - when certain of the capacities under the Directive – particularly relevant for non-EU AIFMs – are “switched on”.

<sup>5</sup> For UCITS ManCos concerning one or more of the instruments listed in Part 3 of Annex I to the MiFID II only

<sup>6</sup> For UCITS ManCos concerning one or more of the instruments listed in Part 3 of Annex I to the MiFID II only

## 1.3 Dual AIFM/UCITS Authorisation and MiFID Top-Ups

Subject to obtaining the relevant authorisations, a Management Company can obtain a dual authorisation as a UCITS ManCo and AIFM i.e a "**Super ManCo**" which allows it to manage both UCITS and AIFs and market those UCITS and AIFs cross border within the EEA with the benefit of an EEA passport as applicable under the relevant UCITS and AIFMD regimes. Where that "**Super ManCo**" also obtains the MiFID "top-up" permissions referred to in 1.2 above such entities are known as "**Mega ManCos**". Given that MiFID firms cannot be AIFMs, we have seen a number of MiFID asset managers give up their MiFID authorisations in place of obtaining such Super ManCo or Mega ManCo authorisations.

In summary, a UCITS ManCo which proposes to manage an AIF will not be subject to the UCITS Regulations for that activity but will instead be required to obtain an additional authorisation under the AIFMD Regulations and vice versa.

There are real benefits to such an approach as the single legal entity can manage both types of funds:

- within a single legal entity;
- with one board of directors and a single executive team;
- with one capital requirement;
- with one audit;
- with one set of policies and procedures (albeit having to address both regimes and there are differences).

The Super ManCo can also expand its lines of business into individual portfolio management, investment advice, etc. and all with a full EEA passport by becoming a Mega ManCo.

## 1.4 Summary

In summary, depending on the level of authorisation obtained (UCITS and/or AIFM core v UCITS and/or AIFM core plus non-core), an Irish domiciled Management Company, subject to obtaining the relevant authorisations, may, for example:

- manage an Irish UCITS; and
- act as investment manager / administrator / distributor to an Italian UCITS; and
- manage a Luxembourg UCITS and market it in Germany; and
- act as a non-AIFM manager of Irish AIFs such as a unit trust or common contractual fund; and
- manage an Irish AIF or EU AIF and market those AIFs cross border to professional investors with the benefit of a full EEA passport ;
- manage a non-EU AIF;
- act as investment manager / administrator / distributor to an EU / non-EU AIF; and
- manage on a discretionary basis individual portfolios of investments for non-fund clients; and
- provide investment advice to a French pension fund;





## 2. Fund Management Companies Guidance



## 2 Fund Management Companies Guidance

This section summarises the practical steps involved in applying to the Irish Central Bank for authorisation as a Management Company.

### 2.1 Who can apply?

The applicant must be a body corporate which has its registered and head office in Ireland.

It must comply with the capital requirements set out below (see para 3.2 below) and its directors and its managers must comply with Irish fitness and probity requirements and its shareholders must meet the Central Bank's suitability requirements.

### 2.2 Application process

Initially in advance of making a formal application, a meeting will take place between the Management Company applicant and the Central Bank for the purpose of discussing the proposed business to be carried out by the applicant. This serves a dual purpose by enabling the Central Bank to familiarise itself with the background and business credentials of the applicant whilst identifying, at a critical early stage, any potential issues for the Central Bank with the proposed business. The Central Bank will require the applicant to prepare and submit a pre-meeting presentation to it for its consideration.

Following the initial meeting, the Central Bank will request the submission of a Key Facts Document (KFD), being a summary document setting out the applicant's business proposal and the relevant key information such as background to the applicant firm, rationale for selecting Ireland as a location for its business, an overview of the business model/strategy of the applicant firm, details of the proposed activities both regulated and non-regulated, anticipated AUM, overview of the organisational structure, number of employees etc.

Once the KFD has been agreed with the Central Bank, the Central Bank will then invite the applicant to make a formal application which requires the preparation, completion and filing with the Central Bank of the following documents:

- (i) a completed application form signed by two directors of the applicant;
- (ii) completed individual questionnaires (IQs) in respect of:
  - each director and senior manager; and
  - any natural person with a qualifying holding in the Management Company (i.e. any direct or indirect holding of 10% or more of the equity or voting rights of the applicant firm).
- (iii) details of the financial and regulatory status of any non-natural person with a qualifying holding in the Management Company;

- (iv) a bespoke and detailed business plan/programme of activity that takes account of the requirements of the UCITS Regulations and/or the AIFMD Regulations as applicable and the related Central Bank guidance namely the Central Bank's Fund Management Company Guidance. The business plan/programme of activity should accurately reflect the operation of the applicant firm, its proposed activities and procedures;
- (v) information on its proposed remuneration policies and practices, its delegation and sub-delegation arrangements and on the AIFs it intends to manage;
- (vi) all ancillary documentation requested in the application form, i.e. financial projections, statement of responsibility, etc; and
- (vii) policies, to include:
  - i. Conflicts of Interest Policy (including conflicts register),
  - ii. Governance Policy. This should address board structure (including skill set, tenure and balance), escalation procedure and details of board committees,
  - iii. Risk Management Policy: Role of risk in all aspects of the applicant firm, including role of internal control functions in strategic decision making,
  - iv. Delegation/Due Diligence Policy: All known delegates should be identified in the policy, as should objective reasons for delegation and decision-making process,

Group policies will not be accepted-all policies must be firm specific.

Following review of these documents, the Central Bank will then enter into correspondence with the applicant which regularly takes the form of submitting additional documentation and providing clarifications to comments/queries raised by the Central Bank where required.

## 2.3 Directors

Prior Central Bank approval is required for the appointment of directors. A minimum of two directors must be Irish resident and at least one must be independent. The Management Company board must not have any directors in common with the board of the UCITS or AIFM's depository and the Management Company's board must also appoint a chairperson (whom the Central Bank expects to be independent) on a permanent basis.

As noted previously, directors are also subject to obligations under the Irish fitness and probity regime <sup>7</sup>and the Central Bank's individual accountability framework as implemented by the Central Bank (Individual Accountability Framework) Act, 2023 and related Central Bank Regulations<sup>8</sup> and Guidance<sup>9</sup>.

## 2.4 Authorisation Timing

The timeframe for getting authorised as a Management Company is 6 to 9 months from the date of submission of a complete application to the Central Bank.

The overall timing is ultimately dependent on the type of activities which the Management Company is seeking to carry out, the response times of the Central Bank, whether any material issues arise during the application process, as well as the response times of the parties involved. Care needs to be taken that your application is complete. Incomplete applications can be rejected and will definitely lead to delay.

## 2.5 Staffing Requirements

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<sup>7</sup> Requirements, PCF Assessment and Ongoing Compliance | Central Bank of Ireland

<sup>8</sup> <https://www.centralbank.ie/publication/consultation-papers/cp153-enhanced-governance-performance-and-accountability-in-financial-services-regulation-and-guidance-under-the-central-bank>

<sup>9</sup> <https://www.centralbank.ie/publication/consultation-papers/cp153-enhanced-governance-performance-and-accountability-in-financial-services-regulation-and-guidance-under-the-central-bank>



Following the publication by ESMA of its Opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union<sup>10</sup>, there has been a significant move to ensuring real substance in the organisational structure of Management Companies located in the EEA. In a letter to industry in October 2020, the Central Bank reaffirmed the expectation that all Management Companies authorised in Ireland, should have a minimum of 3 locally based full-time (or equivalent to full time) employees, each of whom should be suitably qualified and of appropriate seniority to fulfil the role. At a minimum the Central Bank expects such roles to cover risk, compliance and finance functions and expects that there will be a Chief Executive Officer appointed to the applicant firm. The letter states that the requirement is “a minimum expectation and only relevant to the smallest and simplest of entities” and notes that other firms “will be expected to have a level and quality of resourcing determined by the nature, scale and complexity of its operations.” Additional requirements and criteria need to be taken into account when a Management Company delegates investment management functions, with the principal requirement being that the Management Company cannot delegate the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the Management Company itself.

Applicants also need to understand that if they intend acting as a Super ManCo or a Mega ManCo, for example, they are likely to be subject to greater staffing requirements. In particular the Central Bank will require that individuals with primary responsibility for the investment management function are located in Ireland.

The Central Bank also outlined that Management Companies must appoint locally based Designated Persons (discussed in further detail below) and other staff with sufficient time dedicated to their roles in order to fulfil their duties, which include oversight of delegated activities. The Central Bank expects that for larger firms, Designated Persons are full time employees.

## 2.6 Irish Regulatory Levies

Management Companies pay an annual levy contribution to the Central Bank, the amount of which depends on its rating within the Central Bank’s probability risk and impact system (PRISM) framework.

<sup>10</sup> [https://www.esma.europa.eu/sites/default/files/library/esma34-45-344\\_opinion\\_to\\_support\\_supervisory\\_convergence\\_in\\_the\\_area\\_of\\_investment\\_management\\_in\\_the\\_context\\_of\\_the\\_united\\_kingdom\\_withdrawing\\_from\\_the\\_european\\_union.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-344_opinion_to_support_supervisory_convergence_in_the_area_of_investment_management_in_the_context_of_the_united_kingdom_withdrawing_from_the_european_union.pdf)



### 3. Management Company Requirements



### 3. Management Company Requirements

Below is a broad summary of the key requirements applicable to Irish Management Companies.

#### 3.1 Central Bank Fund Management Companies Guidance

The Central Bank's Fund Management Companies Guidance ("FMC Guidance") which was first introduced in 2017 for applicants seeking new authorisations and in mid-2018 for existing firms, sets out the standards required of fund management companies in respect of their governance, management, control and resourcing procedures. The Guidance outlines requirements and standards in the following areas:

(i) Delegate Oversight

It is common for the board of a Management Company to delegate certain tasks to external service providers. The FMC Guidance makes clear that such delegation, and the legal responsibilities of delegates, does not reduce the Management Company board's ultimate responsibility. It follows that the board must, notwithstanding any such delegation, at all times retain and exercise overall control of the relevant company's management.

(ii) Organisational Effectiveness

The FMC Guidance requires one of the Management Company's independent directors to undertake a role for organisational effectiveness. The director charged with this responsibility has the specific task of keeping the effectiveness of the organisational arrangements of the Management Company under ongoing review, with his / her reports presented to the other board members for discussion and decision.

(iii) Directors' Time Commitments

The FMC Guidance states that a reasonable number of working hours available for an individual director is approximately 2000 per year, based on a 9-hour day and 230 working days per annum. The Central Bank expects directors to be in a position to satisfy themselves, and their boards, that they have sufficient time to fully discharge their duties.

(iv) Managerial Functions

The Guidance sets out six key managerial functions for Management Companies:

(a) Capital and Financial Management.

- (b) Operational Risk Management.
- (c) Fund Risk Management.
- (d) Investment Management.
- (e) Distribution.
- (f) Regulatory Compliance.

Each Management Company is required to identify an individual, known as a Designated Person, who will be responsible for monitoring and overseeing the managerial function assigned to him or her. A Designated Person may oversee more than one managerial function and the same Designated Person may carry out the managerial functions of (i) fund risk management and (ii) operational risk management. However, a Designated Person cannot perform the investment management function and either the fund risk management function or the operational risk management function.

- (v) Operational Issues

The Guidance outlines certain requirements for Management Companies relating to the retention, archiving and retrievability of records, as well the obligation to maintain and monitor a designated email address for the Management Company.

- (vi) Procedural Matters

The Guidance provides an overview of the detailed information required for applications to be authorised as a Management Company, further details of which are set out in paragraph 2.2 above.

## 3.2 Capital Requirements

The capital requirements which must be satisfied by a Management Company will depend on whether or not it is authorised by the Central Bank to provide individual portfolio management services.

### Management Companies with no permissions to provide individual portfolio management services

Different capital requirements may apply to those Management Companies which are authorised by the Central Bank to provide individual portfolio management services under Regulation 16(2) of the Irish UCITS Regulations/Regulation 7(4) of the AIFM Regulations respectively ("MiFID Top-Up Management Companies").

Any MiFID Top-Up Management Companies which constitute a "small and non-interconnected firm" must comply with the Minimum Capital Requirements outlined above.

However, any MiFID Top-Up Management Companies which do not constitute a "small and non-interconnected firm"<sup>11</sup> will be required to calculate a "Risk to Client K-factor own funds requirement" (the "K-Factor Capital Requirement") in the manner set down in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) Regulations, 2019 as amended and the Central Bank's AIF Rulebook in order to determine their "own funds" requirements.

## 3.3 Organisational Requirements

Management Companies are subject to MiFID like organisational and internal control requirements, conflicts of interest requirements and risk management requirements. In addition, Management Companies are required to comply with certain rules of conduct. The requirements affect all Management Companies, whether they operate on a fully delegated basis (delegating out administration, investment management and distribution activities) or whether they retain, for example, administration and delegate out investment management and distribution.

Importantly, the UCITS and AIFMD legislative regimes recognise the principle of proportionality. In other words, the

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<sup>11</sup> The criteria to be satisfied in order to constitute a "small and non-interconnected firm" are set down in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) Regulations, 2019 as amended in the case of Irish UCITS management companies and in the Central Bank's AIF Rulebook in the case of Irish AIFMs.

application of most (but not all) of the organisational requirements must take into account the nature, scale, and complexities of different Management Companies.

A summary of the current organisational requirements is set out below. It should be noted that the following section focuses on Management Companies carrying out collective portfolio management, not individual portfolio management.

- (i) **General Requirements:** Management Companies are required to have adequate internal organisational and control mechanisms, clear reporting lines and assignment of responsibilities. Other requirements imposed are to protect confidentiality, the security and integrity of information and the requirement to ensure adequate business continuity policies. The principle of proportionality and the recognition of the ability to delegate, as highlighted above, apply.
- (ii) **Resources:** Management Companies are required to employ “personnel with the skills, knowledge and expertise” necessary for the discharge of the responsibilities allocated to them and to monitor its delegates. The principle of proportionality and the recognition of the ability to delegate, as highlighted above, apply.
- (iii) **Complaints:** Management Companies are required to establish, implement and maintain effective and transparent procedures for complaints handling.
- (iv) **Electronic data processing, record keeping and other recording requirements:** Management Companies are required to ensure timely and proper recording of each portfolio transaction and of subscription and redemption orders. In addition, they are required to ensure appropriate safeguards are put in place to ensure that electronic data processes are secure and that the integrity and confidentiality of recorded information in respect of the UCITS or AIF is maintained. Management Companies are also subject to record keeping obligations in line with the UCITS Regulations, AIFMD Regulations and the FMC Guidance.
- (v) **Control by senior management and supervisory function:** The UCITS and AIFMD legislative regimes requires oversight by senior management in respect of delegated service providers. Senior management (which can include directors) must receive on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management, conflicts of interest, investment policy and strategies indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies or breaches. On a regular basis they must also receive various other written reports relating to the discharge of those functions.
- (vi) **Compliance function, internal audit function and risk management function:** Management Companies are required to have a permanent compliance function, a permanent risk management function and, subject to the principle of proportionality, an internal audit function.
- (vii) **Exercise of Voting Rights:** Management Companies are required to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the portfolios of funds under management are to be exercised, to the exclusive benefit of the funds concerned.
- (viii) **Personal Transactions:** Management Companies are required to identify and record employee’s personal transactions and to ensure the notification and recording of personal transactions to the Management Company. They are also required to ensure that proper preventative measures are put in place to prevent potential breaches by individuals of the market abuse rules.
- (ix) **Rules of Conduct:** The overriding obligations on Management Companies is to ensure that they act in the best interests of the investors of the investment funds under management and the integrity of the market.

## 3.4 Conflicts of Interest

A Management Company is obliged to try to avoid conflicts of interest and, when they cannot be avoided, ensure that the funds it manages are fairly treated. A Management Company must establish, implement and maintain an effective conflicts of interest policy which must (i) identify the circumstances which constitute or may give rise to a conflict entailing a material risk of damage to the interests of the fund it manages or one or more other clients and (ii) set out procedures to be followed and measures to be adopted in order to manage such conflicts. The conflicts of interest policy and the attendant register must form part of the initial application for authorisation.



## 3.5 Due Diligence

Management Companies must establish policies and procedures in writing on due diligence in the selection and monitoring of investments and implement effective arrangements for ensuring that investment decisions on behalf of a fund are carried out in compliance with the objectives, investment strategy and risk limits of the relevant fund. Management Companies are also under regulatory obligations to exercise skill, care and diligence when identifying the appointment of a delegate or third party for any task. The applicant's due diligence policy must form part of the initial application for authorisation.

## 3.6 Risk Management

Management Companies are required to establish, implement and maintain an adequate risk management policy, which addresses all risks which may be material for the Management Companies, including market, liquidity, counterparty and operational risks. This policy must be assessed, monitored and periodically reviewed, at least once a year. The applicant's risk management policy must form part of the initial application for authorisation.

## 3.7 Liquidity Risk Management

Management Companies must employ an appropriate liquidity risk management process in order to ensure the liquidity profile of underlying investments complies with underlying obligations including the redemption policy of the fund. Where appropriate, Management Companies must conduct stress tests under normal and exceptional liquidity conditions to enable assessment of the liquidity risk of a fund. As above the applicant's risk management policy including liquidity risk management must form part of the initial application for authorisation.

## 3.8 Cybersecurity Risk Management

While not specifically referenced within the AIFMD or UCITS legislative framework, the Central Bank requires Management Companies to have a "comprehensive, documented and Board approved IT and cybersecurity strategy" and that there should be a well-defined and comprehensive IT and cyber security risk management framework in place that is appropriate to its business<sup>12</sup>.

## 3.9 Valuation Obligations

Management Companies are obliged in respect of each fund that they manage to establish and ensure adherence to a valuation policy that sets out the valuation methodology of the assets of that fund. Management Companies must ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Under the AIFMD Regulations, a Management Company must ensure that appropriate and consistent procedures are established for the proper and independent valuation of AIF assets and that its written valuation policies and procedures ensure a sound transparent, comprehensive and appropriately documented valuation process. The regulatory expectation is that such valuation policies and procedures clearly outline operational roles and responsibilities for all parties involved in the asset valuation process. Such policies and procedures should be reviewed at least once a year and Management Companies should ensure that there is clear ownership of such policies, procedures and review process<sup>13</sup>.

## 3.10 Remuneration

Management Companies are required to establish and apply remuneration policies and practices that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the funds they manage and in the case of UCITS ManCos do not impair compliance with the Management Companies duty to act in the best interests of the fund it manages.

The remuneration policies and practices apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management

<sup>12</sup> For further information see May 2012 ([dilloneustace.com](http://dilloneustace.com))

<sup>13</sup> For further information please see Industry Letter - 2022 ESMA Common Supervisory Action on Asset Valuation ([centralbank.ie](http://centralbank.ie))



and risk takers whose professional activities have a material impact on the risk profiles of the relevant Management Company or of the funds it manages.

Management Company remuneration structures are required to include:

- (i) criteria for calculating compensation for different categories of staff;
- (ii) a ban on guaranteed variable remuneration except in exceptional circumstances;
- (iii) rules for fixed and variable components of total remuneration (including a requirement that at least 50% (or in the case of a Management Company where management of a UCITS accounts for less than 50% of the total portfolio managed by the Management Company, a substantial portion) of any variable remuneration is in the form of units of funds under management);
- (iv) rules on pension benefits; and
- (v) rules for payments related to early termination of employment (to ensure that failure is not rewarded).

Management Companies, however, have some flexibility to allow for the sound application of the remuneration policies in a manner proportionate to its size, its internal organisation as well as the nature, scale and complexity of its activities.

A Management Company that is significant in terms of its size or the size of the funds it manages, its internal organisation and the nature, the scope and the complexity of its activities is required to establish a remuneration committee. The remuneration policy must be reviewed on an annual basis.

### 3.11 Costs and Fees

Management Companies are under an obligation to ensure that the funds they manage and the investors in these funds are not charged undue costs. The regulatory expectation is that Management Companies must ensure that when setting the cost and fee structure, the Management Company must have regard to its obligation to act in the best interests of investors and to treat investors fairly. Management Companies are required to have formalised written pricing policies and procedures in place with clear oversight and approval from senior management that allows for the transparent identification and quantification of all costs charged to the relevant funds<sup>14</sup>.

### 3.12 Delegation and Outsourcing

Management Companies may delegate their activities to third parties provided certain regulatory conditions are met such as, *inter alia*, the third parties are qualified and capable of performing the activities delegated to them and procedures are in place to enable the Management Companies to monitor effectively at any time the activity of the third parties. Management Companies should exercise skill, care and diligence when identifying and approving the appointment of a delegate for any task. Ultimate responsibility for any activities delegated by the Management Company to a third party remains with the Management Company and the board of a Management Company should continue to exercise skill, care and diligence in its continuing oversight of delegates.

<sup>14</sup> For further information see [Dear Chair Letter on undue costs and fees](#) | Dillon Eustace



Additionally, Management Companies will come in scope of the Central Bank's Cross-Industry Guidance on Outsourcing ("**Outsourcing Guidance**")<sup>15</sup> pursuant to which Management Companies are required to develop an appropriate and effective outsourcing risk management framework in line with the Outsourcing Guidance. The principle of proportionality will apply to Management Companies in their implementation of the Outsourcing Guidance.

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15 For further information see <https://www.dilloneustace.com/legal-updates/central-bank-guidance-on-outsourcing-implications-for-fund-management-companies>

# 4. Taxation

The image features a decorative bridge with a white railing and a brick building in the background, overlaid with a teal gradient. The bridge has a curved railing with a decorative top rail and a lower rail with a lattice pattern. The building in the background is a multi-story brick structure with several windows. The overall scene is captured in a soft, slightly blurred style, giving it a serene and architectural feel.



## 4 Taxation

Irish UCITS ManCos are generally subject to corporation tax at 12.5% which positions Ireland well for the passporting of services by such companies 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.

### 4.1 Irish Corporate Tax Rates

Ireland offers a very attractive taxation regime for UCITS ManCos with the UCITS ManCo being taxed at either 12.5% or 25% on its profits.

For UCITS ManCos, typical profits qualifying for the 12.5% tax rate would be fee income and income arising from an investment of the UCITS ManCo’s minimum regulatory capital requirements. An investment by the UCITS ManCos in a UCITS 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 an extensive double tax treaty network, with 76 signed treaties, 74 of which are currently in force.

#### Pillar 2 Rules

In line with the OECD Model Rules and the EU Minimum Tax Directive, Ireland has recently introduced Pillar 2 rules. Pillar 2 seeks to ensure that large groups incur a minimum 15% effective tax rate on their profits in each jurisdiction in which they operate.

It is important to note that the Pillar 2 rules only apply to;

- (a) members of multinational groups (“MNE Groups”) and large-scale domestic groups with consolidated revenues of at least €750 million in at least two of the four years preceding the current accounting period; or
- (b) Entities that do not fall into (a) above but that, on a standalone basis, have revenue that exceeds €750m in at least two of the four years preceding the current accounting period.

To the extent the above applies to an entity, there are still certain exclusions and/or deferrals of the application of the rules that can be relevant.



## 4.2 Repatriation of After-Tax Profits

A UCITS ManCo can 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 (including the UK) or in a country which Ireland has signed but not yet ratified a double tax treaty (“**Qualifying Country**”), or in the case of a non-resident company, 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<sup>16</sup>.

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 Dividend Withholding Tax 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 real property.

## 4.3 Transfer Pricing

Irish transfer pricing legislation seeks to increase understated receipts and reduce overstated expenses of companies and branches in Ireland. The 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%).

SMEs (small or medium-sized enterprises) are currently excluded from the scope of Irish transfer pricing rules (depending on their size, SMEs will either be fully exempt from or have significantly reduced transfer pricing documentation requirements). Notwithstanding this exclusion, it should be noted that Irish tax legislation provides for SMEs to fall within the scope of Irish transfer pricing rules in the future on the making of a commencement order by the Irish Minister for Finance. No such commencement order has been issued to date.

<sup>16</sup> As part of the OECD's BEPS project, Irish tax rules have recently been introduced whereby, in certain limited circumstances, the above exemptions from Irish dividend withholding tax can be disapplied. In order for these rules to apply, the dividend must be paid to an associated entity and that associated entity must be resident in a specified territory (essentially, a territory that is not an EU member state and that is either (i) on the EU list of non-cooperative jurisdictions or (ii) a zero-tax territory). Even to the extent these conditions are met, there are several exceptions/exclusions which may be applicable. For example, a dividend made by a UCITS ManCo out of income/profits/gains that have been charged to Irish corporation tax should be excluded from the rules.



For the purposes of the above, an SME is essentially 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.

## 4.4 VAT

The provision of management services by a UCITS ManCo to a UCITS located in Ireland or in another EU member state is typically VAT exempt.

To the extent a UCITS ManCo incurs VAT on input costs in respect of the provision of VAT exempt services to Irish UCITS it then it can recover all or a percentage of such VAT input costs at the combined recovery rate of the underlying Irish UCITS it manages. There is no equivalent VAT recovery entitlement where a UCITS ManCo incurs VAT on input costs in respect of the provision of VAT exempt services to a UCITS located in another EU member state.

## 4.5 Personal tax regime for Executives of the UCITS ManCo

In certain limited 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 also has the concept of non-doms and consequently it may be attractive for some investment managers 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 considerably reduce an individual's effective tax rate for 5 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 expenses of travel and certain costs associated with the education of their children in Ireland.

In addition to SARP, there also are various other employee tax incentive schemes that can be of significant benefit.

For example, the Key Employee Engagement Programme (KEEP) is a tax efficient share-based remuneration scheme which essentially allows the exercise of any qualifying share options by an employee/director to be fully exempt from Irish income tax (and other payroll related taxes such as USC and PRSI). Irish tax should only arise when the shares are sold, being subject to Irish CGT. In order for the KEEP to apply, various conditions must be met.



**5.** Proposed Changes to  
Services, Authorisation  
and Delegation under  
AIFMD and UCITS  
Reform





## 5. Proposed Changes to Services, Authorisation and Delegation under AIFMD and UCITS Reform

In November 2023 the European Council published its final compromise text for the Directive amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds. Whilst at the date of publication that final text has not yet been published in the Official Journal and may be subject to further change, important changes are proposed to the scope of activities, authorisation and operational requirements which will be applicable to Irish authorised Management Companies.

- (i) The list of ancillary services that an AIFM can provide will be extended to include the provision of benchmark administration services under Regulation (EU) 2016/1011 and credit servicing governed by Directive (EU) 2021/21/67. AIFMD will also be updated to confirm that management of AIFs can also comprise the activities of originating loans on behalf of an AIF and servicing securitisation special purpose entities.
- (ii) The list of ancillary services that a UCITS ManCo can provide will also be updated to include the provision of benchmark administration services (though not for benchmarks which are used in the UCITS they manage) and also reception and transmission of orders in relation to financial instruments aligned with the provisions relating to AIFMs.
- (iii) Management Companies shall not be authorised unless, inter alia, the conduct of the business of the Management Company is being decided by at least two natural persons who are either employed full-time by the Management Company or executive members of the governing body of the Management Company who are committed full-time to conduct the business of the Management Company and who are domiciled in the EU.
- (iv) In any application for authorisation Management Companies will be required to provide information relating to delegation and sub-delegation to third parties. The Management Company will also be required to provide for each delegate:
  - a. Its legal name and relevant identifier;
  - b. Its jurisdiction of establishment;
  - c. Where relevant, its supervisory authority;

The Management Company will also be required to provide a detailed description of the human and technical resources employed by the Management Company for performing day to day portfolio or risk management tasks within the Management Company and monitoring the delegated activity.

The Management Company will also be required to provide in respect of each of the funds it manages or intends to

manage:

- a brief description of the delegated portfolio management functions, including whether such delegation amounts to a partial or full delegation,
  - a brief description of the delegated risk management functions, including whether each such delegation amounts to a partial or full delegation,
  - a description of periodic due diligence measures to be carried out in monitoring the delegated activity.
- (v) Management Companies shall be permitted to delegate the provision of individual portfolio management/non-core services provided such third parties are capable and competent to provide such services. The requirement to notify the Central Bank of delegation and sub-delegation of functions shall be extended to such services and the Management Company's liability shall not be affected by any such delegation or sub-delegation. Management Companies will be required to ensure compliance with the legislative obligations imposed on it "irrespective of the regulatory status or location" of the delegate or sub-delegate. Additionally, any delegation of these services cannot result in the Management Company operating as a "letter box entity" with respect to the provision of such services.
- (vi) Conflicts of Interest: whilst most likely relevant to Management Companies seeking to act as host Management Companies for third party/white label platforms, the changes to the legislative framework will require Management Companies managing funds at the initiative of a third party to submit detailed explanations and evidence of its compliance with the conflicts of interests rules. This includes detailing what reasonable steps have been taken to prevent conflicts of interest from arising or, if they cannot be prevented, how it manages, monitors and discloses such conflicts in the interests of the relevant funds and their investors.



The background image is a photograph of a decorative bridge, likely the Clifton Suspension Bridge in Bristol, England. The bridge features ornate metalwork and a brick building with a clock tower in the background. The entire image is overlaid with a semi-transparent teal color.

**6.** How can Dillon Eustace assist you?



## 6 How can Dillon Eustace assist you?

Dillon Eustace has a deep understanding and unrivalled experience of advising on the establishment, operation and passporting of Irish authorised Management Companies.

We can advise you on all aspects of the Management Company set up process, including:

- examining your business needs to assess different stand alone, supported or third party platform solutions;
- making initial introductions to Central Bank personnel in relation to a proposed application;
- providing you with a template form of pre-Central Bank meeting presentation and then working closely with you to tailor the presentation to your circumstances;
- providing you with a template form of 'key facts document' (KFD) and then working closely with you to tailor the KFD to your circumstances;
- providing you with a pro forma Business Plan/Programme of Activity, a full set of policies and procedures, compliance matrix/plan and ancillary documents and then working closely with you to tailor them to your circumstances;
- assisting you with the application process, filing of forms and the completion of individual questionnaires;
- assisting you with incorporation of the company, letting of premises, hiring of staff, tax registrations and bank account opening;
- preparing management agreement and agreements with delegates, etc;
- providing company secretarial services and carrying out fitness and probity checks on intended directors and persons occupying controlled functions.

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

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