A Guide to Selling Regulated Investment Funds in Asia

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

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INTRODUCTION

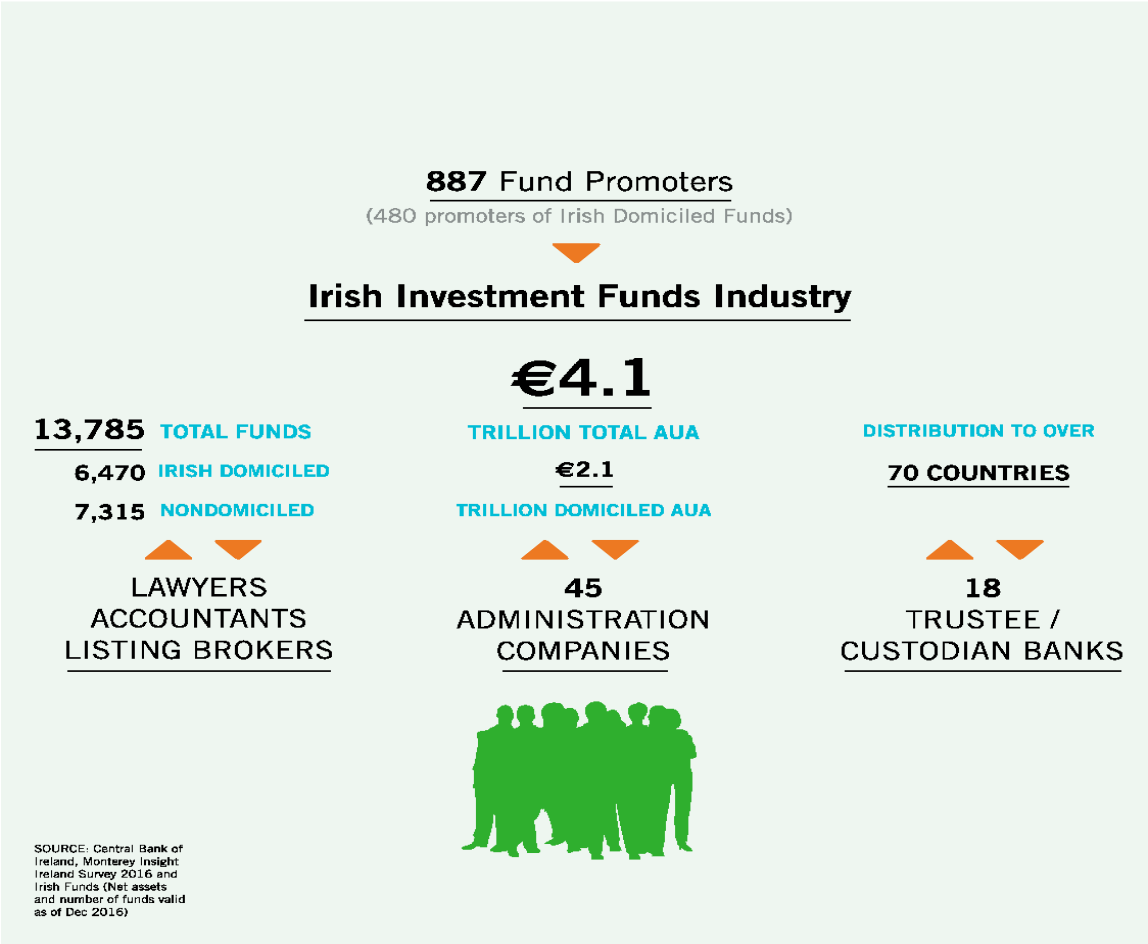
Ireland, over the last quarter of a century has become a major hub for cross-border distribution. It is one of the leading EU “exporting” jurisdictions for investment funds, for both UCITS and non-UCITS. International fund promoters from over 50 countries use Ireland as their domicile of choice for fund products and seek to access not only the European market place but also markets outside the EU including the main Asia-Pacific markets.

Ireland is the number one hedge fund centre in the world and Irish funds are distributed in over 70 countries worldwide.Wherever your fund is domiciled, it can be serviced out of Ireland – 30 languages and 28 currencies are fully supported. In particular Japan, Hong Kong, Singapore and Korea have become popular jurisdictions into which asset managers choose to market and sell their funds with particular acceptance of UCITS (the European "gold standard" product) in those markets. The Irish Stock Exchange is the leading stock exchange globally for the listing of investment funds.

Ireland is an internationally recognised jurisdiction with membership of the EU, Eurozone, OECD, FATF and IOSCO. These memberships are valued and none of these memberships will be relinquished by Ireland.

Ireland does not operate a banking secrecy regime and with openness, transparency and regulation as the pillars of the industry, Ireland leads the global industry in compliance with internationally agreed tax standards, further evidenced by volunteering for a peer review by the G20 and OECD countries. Ireland cooperates with all EU states on the basis of the European directives and the Irish Central Bank has signed Memoranda of Understanding with 44 countries including China, Dubai, France, Hong Kong, Isle of Man, Germany, Japan, Jersey, Malaysia, South Africa, Switzerland, Taiwan, United Kingdom, and the USA.

Ireland offers a wide variety of fund vehicles across the full range of fund products from plain vanilla and alternative UCITS, hedge funds and funds of hedge funds, to private equity and real estate, as well as a developed legal and tax infrastructure. The continued growth in the funds industry in Ireland is helped by a competitive environment in which wide selection of fund service providers offer a value for money service. A commitment on the part of the Irish regulatory authorities, notably the Central Bank of Ireland and Irish Stock Exchange, to adapt and develop regulations to keep pace with developments in the funds industry internationally assists this growth.



The categories of investment funds which may be established in Ireland comprise UCITS, which are funds established under the regulations implementing the European Union's ("EU") UCITS Directives, and funds which are established pursuant to domestic Irish law which are generally referred to as "non-UCITS" or Alternative Investment Funds ("AIFs"). In the context of AIFs, the Alternative Investment Fund Managers Directive 2011/61/EU provides for the passport by Alternative Investment Fund Managers of qualifying AIFs to professional investors throughout the European Economic Area. In this regard Irish domiciled AIFs may also be used to access the main Asia-Pacific markets subject to the various requirements being satisfied.

As of January 2017, the total number of Irish domiciled funds (including sub-funds) reached 6,478 with total net assets of € 2,097 billion (Source: Central Bank of Ireland). Of this total number of Irish domiciled funds and total net assets, UCITS funds accounted for 4,064 of the total with total net assets of €1,586 billion and AIF's accounted for 2,414 of the total with total net assets of €511 billion. All key fund promoters appear on the list of Top 50 Promoters of Irish Domiciled Funds. Additionally there are 480 investment managers (from 50 different countries) providing services to Irish domiciled funds (Sources: Central Bank of Ireland, Monterey Insight Ireland Survey 2016 and Irish Funds). As at 31st December 2016 the value of non-domiciled funds serviced from Ireland amounted to an additional €2 trillion which is again testament to Ireland's well established financial services infrastructure.

Dillon Eustace Asset Management and Investment Funds team advises international and domestic asset managers, banks, insurers, pension funds, supranational organisations, prime brokers and other counterparties, fund administrators and custodians, securities lending agents and others in relation to all aspects of the asset management and investment funds industries. Our team represents the largest number of Irish domiciled funds (Monterey 2016) as well as representing funds domiciled in the Cayman Islands through our Cayman office. Dillon Eustace has also been named in Prequin's May 2017 Hedge Fund Service Providers report in the top 5 list of law firms for hedge fund launches globally. Our Asset Management and Investment Funds practice has been, and remains, one of the firm's core activities with Dillon Eustace partners having been to the forefront of the Irish industry from its beginnings in the late 1980s to the present day.

We advise across all product types, from UCITS to the full spectrum of alternative products such as hedge funds, funds of hedge funds, real estate and private equity funds, the team advises on product design, authorisation and launch, prospectus and contractual documentation negotiation, interaction with regulators and exchanges, funds listing and tax issues, bringing to bear in-depth knowledge and expertise, product innovation and a "can do" attitude. Additionally Dillon Eustace has established a dedicated Foreign Registrations Unit in order to centralise the firm's existing experience and relationships as regards foreign registrations in order to create a more efficient and effective service for clients with respect to their foreign registration requirements. The Foreign Registrations Unit works closely with each client's legal contacts within Dillon Eustace in order to ensure that foreign registrations/approvals are received in a timely manner so that relevant marketing may commence as soon as possible. The Foreign Registrations Unit can assist clients seeking to access both European and non-European markets.

In this publication we have set out the various requirements for marketing a regulated Irish fund in Australia, Hong Kong, Japan, Korea, Malaysia, China, Singapore and Taiwan

whether as a public offering or on a private placement basis. We would like to emphasise that this publication should serve as a general information guide only and does not purport to represent legal or tax advice. In the event of an Irish fund being sold or marketed in any of the jurisdictions referred to in the publication, specific legal advice should be sought in advance from local legal advisors who can be contacted through us.

**We would like to acknowledge the law firms in each of Australia, Hong Kong, Japan, Korea, Malaysia, China, Singapore and Taiwan who have assisted us in the preparation of this publication. Should you wish to contact any of them, please let us know and we will pass on the contact details of the appropriate partner at the relevant law firm.*

Please refer to the Dillon Eustace website for further publications which may be of interest.

http://www.dilloneustace.com/Publications

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AUSTRALIA

*Minter Ellison

Overview

Irish investment funds may be sold in Australia by way of public offering or private placement. Public offerings are regulated under the Corporations Act, 2001 (Cth) (the "Corporations Act") which is administered by the Australian Securities and Investments Commission ("ASIC").

An Irish fund that is offered to Australian 'wholesale' clients (e.g. institutional clients) only is not required to be registered with ASIC.

As detailed below the prospectus of any Irish domiciled fund being sold in Australia may be required to comply with certain Australian requirements. It should be noted from the outset that where any PDS (as defined below) is prepared such document will need to be submitted to the Central Bank in advance to ensure that there are no inconsistencies with the Irish prospectus. If any supplement or addendum to the Irish prospectus,which is specific to Australian domiciled investors, is also prepared this document will also need to be submitted in advance to the Central Bank.

Public Offering

The public offering of interests in a fund in Australia is regulated under the Corporations Act which is administered by ASIC.

Under the Corporations Act, a collective investment scheme is termed a 'managed investment scheme' ("MIS"). Prior to interests in an MIS being offered in Australia, the MIS must be registered with ASIC.

For an MIS to be registered with ASIC, a public company that holds an Australian financial services ("AFS") licence with the requisite authorisations must be appointed to manage and operate the MIS. Under the Corporations Act, that company is termed the 'responsible entity' (“RE”).

As such, there are three primary factors that must be dealt with when considering the

offering of an Irish domiciled fund in Australia, which are as follows:

- whether the fund should be registered as an MIS;
- whether the management company should apply for an AFS licence to operate as the RE of the fund; and
- whether the offering document complies with the requirements of the Corporations Act.

Registration of an MIS

Requirement to Register as an MIS

Registration of an MIS with ASIC is dependent upon whether the MIS will be offered to Australian 'retail' or 'wholesale' (i.e. institutional) clients, regardless of whether the offering will be a public offer or by way of private placement. If a fund has more than 20 members who are 'retail' clients then it must be registered as an MIS with ASIC. If a fund consists solely of 'wholesale' (e.g. institutional) clients only then it is not required to be registered as an MIS with ASIC.

The requirement to register as an MIS is not triggered if the fund is structured as a body corporate. This is because a body corporate does not fall within the definition of a 'managed investment scheme' under the Corporations Act. As such, it is not possible to register an Irish fund structured as a corporate vehicle as an MIS in Australia (i.e. it is not feasible to offer an Irish fund structured as a corporate vehicle to 'retail' clients in Australia because of the disclosure requirements that apply to body corporates).

Registration Process

An application must be made to ASIC to register an MIS consisting of the following documents:

- an ASIC Form 5100;
- a copy of the MIS's constitutional documentation;
- a copy of the MIS's compliance plan; and
- a statement signed by the directors of the proposed RE that the MIS's constitutional

document and compliance plan comply with the requirements under the Corporations Act.

A fee of AUD 2,350 is payable upon lodging the application with ASIC.

Under the Corporations Act, ASIC has 14 days to register an MIS from the date the application is lodged unless it appears to ASIC that the application, RE or MIS constitutional document or compliance plan do not meet the specific requirements of the Corporations Act.

Under the Corporations Act, an MIS constitutional document must (including but not limited to):

- make adequate provision for:
  - the consideration that is to be paid to acquire an interest in the MIS;
  - the powers the RE has in relation to making investments;
  - the method by which complaints made by members in relation to the MIS are to be dealt with; and
  - the winding up the MIS; and
- specify any:
  - rights the RE has to be paid fees out of MIS property or to be indemnified out of MIS property for liabilities or expenses incurred in relation to the performance of its duties;
  - powers the RE has to borrow or raise money for the purposes of the MIS; and
  - rights the members have to withdraw from the MIS.

In practice, it would be very difficult for an Irish fund to meet these constitutional requirements and be acceptable to ASIC. Accordingly, it is rare for an Irish fund to be offered in Australia to retail clients.

In addition, under the Corporations Act, an MIS compliance plan must set out adequate measures that the RE is to apply in operating the MIS to ensure compliance with the Corporations Act and the MIS's constitution. For example, the compliance plan must include arrangements for ensuring that all MIS property is clearly identified as MIS property and held separately from property of the RE and property of any other MIS.

Offering Documentation

Retail Clients
Under the Corporations Act, a product disclosure statement ("PDS") (similar in concepts to a prospectus) must be given to a 'retail' client when an offer is made for the issue of a unit or other interest in the financial product. As such, any offer to a 'retail' client in Australia of a fund must be accompanied by a PDS.

Wholesale clients
The Corporations Act stipulates formal content requirements that must be contained in a PDS. However, securities in a fund would generally be able to be offered without an Australian compliant regulated PDS where the issuer of the securities:

- does not give a client 'personal advice', i.e. financial product advice where the issuer has considered one or more of the client's objectives, financial situations or needs or could reasonably be expected to have considered one or more of those matters; and
- advises the client that it is not licensed to provide financial product advice and that no cooling off period applies for the product; and
- where the securities are offered to 'wholesale' clients.

As such, if funds will only be marketed to 'wholesale' clients (e.g. where a formal PDS is not required), then there are no formal requirements in relation to content of an offer document. However, such a document would need to comply with the general regulatory content requirements (e.g. it must not contain any misleading or deceptive information and it must not contain any false statements or representations), and common law principles (e.g. it must include all significant terms and conditions that will govern the relationship between the investor and the fund). This is the position whether the fund is structured as a unit trust, body corporate or any other structure.

Private Placement

A fund which is offered to Australian 'wholesale' clients (i.e. institutional clients) only is not required to be registered with ASIC. However, the entity that promotes or markets the fund in Australia would need to have (or apply for) an AFS licence unless it falls within an exemption. The fund could engage an Australian AFS licensed company to perform various activities for it (e.g. marketing) in Australia in respect of an offer of securities.

There are several tests under the Corporations Act regarding when a client may be treated as a 'wholesale' client. Briefly, a client will be a 'wholesale' client where (including but not limited to):

- the price or value of the securities being acquired is AUD 500,000 or more; or
- the financial product is not provided for use in connection with a business and the investor provides a copy of a certificate given within the preceding 2 years by a qualified accountant that states that the person has:
  - net assets of at least AUD 2.5 million; or
  - gross income for each of the last 2 financial years of at least AUD 250,000; or
- it is a 'professional investor' (for example, it is the holder of an AFS licence).

AFS Licences

Requirement to Hold an AFS Licence

Under the Corporations Act, any person who is in the business of providing financial services in Australia is required to hold an AFS licence covering the provision of such services, unless an exemption applies.

A 'financial service' includes:

- providing financial product advice in relation to a 'financial product'; and
- dealing (including arranging for dealing to occur) in a financial product,

Broadly speaking:

- 'financial product advice' is a recommendation or statement of opinion that is intended to influence a person's decision in relation to financial products; and
- 'dealing' is acquiring, issuing, varying or disposing of financial products.

A 'financial product' is defined extremely broadly and includes MIS securities.

As such, a company that acts as an RE of an MIS is required to hold an AFS licence with an authorisation that permits it to operate the MIS as it will be advising and dealing in respect of the MIS securities.

ASIC has provided specific exemptions from the AFS licensing requirement under various class orders for certain foreign financial service providers that are registered with the UK FSA, Singaporean MAS, US SEC, Hong Kong SFC and German BaFin, although these class orders are under current review by ASIC. The class orders allow financial services to be provided by an exempted entity (and its employees and other representatives) in Australia provided such services are only provided to 'wholesale' clients. Under these class orders, a foreign financial service provider may engage in advising and dealing without the requirement to hold an AFS licence. There is currently no exemption for financial service providers regulated by the Central Bank of Ireland. Depending on the degree and extent of the activities an exempted entity proposes to undertake in Australia by relying on a class order, it may need to register as a foreign company in Australia.

Obtaining an AFS Licence

The process for applying for an AFS licence is lengthy and expensive. In reviewing an application for an AFS licence, ASIC assesses whether the applicant:

- is competent to carry on the kind of financial services business it is applying for;
- has sufficient financial resources to carry on the business it is proposing; and
- can meet the obligations under the Corporations Act and ASIC policy as a licensee if granted an AFS licence.

To apply for an AFS licence, an ASIC form FS01 must be completed and accompanied by core and additional proofs in support of the application. The amount of time that ASIC may take to decide on the outcome of an application for an AFS licence varies, depending on ASIC's analysis of the business and the market the applicant proposes to operate in.

There is also a fee payable to ASIC upon lodgement of an application for an AFS licence. The fee is AUD 1609 for an application by a body corporate or AUD 895 for a personal application.

HONG KONG

*Deacons

Overview

Irish investment funds may be sold in Hong Kong by way of either public offering or by private placement. Public offerings require Securities and Futures Commission's ("SFC") authorisation, involving a two-fold process - the approval of both the Irish fund's key operators and its offering and constitutive documents.

For private placements there is no requirement to seek authorisation from the SFC but there are restrictions in terms of the types of funds that can be offered, how they can be offered and who may offer them.

The SFC is very familiar with Irish funds and with Irish UCITS in particular. Irish UCITS are regularly sold in Hong Kong.

As detailed below, the prospectus of any Irish domiciled fund being sold in Hong Kong may be required to comply with certain Hong Kong requirements. It should be noted that if a Hong Kong Covering Document or a specific Hong Kong offering document is prepared, such document will need to be submitted to the Central Bank of Ireland in advance to ensure that there are no inconsistencies with the Irish prospectus.

Public Offering

The SFC authorisation process is a two-fold process involving the approval of both the manager of the fund's key operators and its offering and constitutive documents. In order to obtain authorisation, the fund must demonstrate compliance with the SFC's Code on Unit Trusts and Mutual Funds (the "Code") and the Overarching Principles Section , which form part of the SFC Handbook for Unit Trusts and Mutual Funds, Investment Linked Assurance Schemes and Unlisted Structured Investment Products (the "Products Handbook"). Where compliance with a specific provision of the Code is not possible, an application for a waiver from compliance may be made to the SFC. However, as a general rule, it is becoming increasingly difficult for any foreign fund to obtain SFC waivers from the Code.

The SFC will review an Irish UCITS fund on the basis that its structural and operational

requirements and core investment restrictions already comply in substance with the Code. However, in the event of any deviation from the Code, compliance may still be required.

Notwithstanding the above, certain UCITS funds (e.g. money market funds, index tracking funds, hedge funds and structured funds) described in Chapter 8 of the Code, are classified as "specialised schemes" and are required to demonstrate full compliance with the applicable provisions and structural and operational requirements and core investment restrictions of the Code. This also applies to "hybrid" products which share one or more of the above characteristics.

The following general requirements will also apply:

1. The fund must appoint a management company and a custodian/trustee acceptable to the SFC. Where the management company delegates the investment management function to an investment manager or adviser (i.e. where the investment manager and / or adviser undertakes the day to day investment management and exercises control over the investment portfolio) the investment manager and / or adviser will also require SFC approval. The investment manager and / or adviser should be based in one of the acceptable inspection regimes as set out on the SFC's website http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html. The SFC will consider other jurisdictions, and any sub-delegation to an intra-group sub-investment manager and / or sub-adviser which is not based in an acceptable inspection regime, on their merits.

   Where a management company has not previously been approved by the SFC to manage SFC authorised funds, the fund's application for authorisation will be referred to the SFC's Products Advisory Committee (the "Committee"). The Committee will review the fund's application and the acceptability of the new management company. A referral to the Committee extends the process for obtaining the SFC's approval and delays should be factored into any timeline

   It is worth noting that the acceptability of each of the management company and the investment manager / adviser (where the latter has been delegated the investment management function by the management company) will be assessed on certain criteria including:

   - the key personnel of the management company or those of the investment manager / adviser are expected to be its full-time dedicated staff who possess at least 5 years

investment experience managing unit trusts or other public funds with reputable institutions. At least two such key personnel must be nominated and the expertise is in the same type of investments as those proposed for funds seeking SFC authorisation; and

- sufficient human and technical resources must be at the disposal of the management company and investment manager / adviser (as the case may be), which should not rely on a single individual's expertise.

Each of the new management company and investment manager / adviser will have to provide self-certification to the SFC to confirm its compliance with the eligibility requirements under the Code, including key personnel requirements noted above and certain financial and capital requirements. In particular, the management company or investment manager / adviser (as the case may be) must have at least HK$1 million (or its foreign currency equivalent) in issued and paid up capital and capital reserves.

2. The SFC will also need to approve the depositary / trustee of the fund if it has not previously been approved to provide such services to authorised funds in Hong Kong. Most of the custodians/trustees operating in Ireland have been previously approved by the SFC.

3. Funds or their management companies will be required to appoint a Hong Kong Representative whose responsibilities include receiving applications for the issue, conversion and redemption of shares in the fund from Hong Kong investors, liaising with investors and undertaking certain other operational responsibilities required by the Code. The entity to be appointed as a Hong Kong Representative must be an entity licensed or registered under the Hong Kong Securities and Futures Ordinance or a trust company registered under the Trustee Ordinance which is an affiliate of a Hong Kong authorised financial institution.

4. It will also be necessary to prepare Hong Kong specific documentation for the fund, as more fully described under "Documentation" below.

Once the fund is authorised in Hong Kong, it will be subject to a number of ongoing reporting and other requirements in relation to its Hong Kong activities. These are detailed in Chapters 10 and 11 of the Code. SFC authorised funds must also keep abreast of SFC circulars and investment products related "FAQs", which are issued by the SFC to the industry from time to time, as guidance.

Documentation

As mentioned above, the fund's offering and constitutive documentation are required to comply with the Code. In addition, in the case of a UCITS fund, the SFC require a confirmation from the management company that such constitutive documents comply with all applicable Irish laws, regulations and requirements of the Central Bank of Ireland, that they are the latest versions that have been filed with the Central Bank of Ireland and that they do not exclude the jurisdiction of the courts of Hong Kong and contain provisions on connected party transaction provisions meeting the requirements of the Code. Depending on the structure of the fund, the constitutive documents may include the memorandum and articles of association or the trust deed and the relevant service agreements (such as management agreement, investment management agreement, investment advisory agreement, administration agreement, custodian agreement, etc). For a fund investing in financial derivative instruments extensively for investment purposes, additional information including, a confirmation by the management company to the SFC that there are suitable risk management and control processes in place, which are commensurate with the risk profile of the fund, will be required. A summary of such risk management and control processes will also need to be disclosed in the fund's Hong Kong offering document.

It should be noted that the Code prohibits the charging of marketing expenses to an SFC authorised fund. This issue is non-negotiable with the SFC and all existing SFC authorised funds are required to adhere to this provision.

A Hong Kong Representative which meets the requirements of Chapter 9 of the Code will need to be appointed pursuant to a Hong Kong Representative Agreement.

The fund's Hong Kong offering document will be required to comply with the Code and it will also be necessary to prepare a Chinese translation of the offering document. There are a number of options available in satisfying this requirement. (i) The existing Irish prospectus can be supplemented by a Hong Kong Covering Document (for use solely in Hong Kong), which would contain specific additional information required in order to comply with the Code. Thereafter both the Irish prospectus and the Hong Kong Covering Document can be translated into Chinese. (ii) A Hong Kong specific bilingual offering document can be prepared for distribution solely in Hong Kong. Such document would be drafted on the basis of the existing Irish prospectus but with appropriate amendments required in order to comply with the Code. If this second option is utilised, the Irish prospectus would not need to be approved by the SFC (and therefore would not be available for distribution in Hong Kong). In this case, the only offering document in Hong Kong would be the Hong Kong specific bilingual offering document.

SFC authorised funds are required to issue a product key facts statement ("KFS") which contains information that enables investors to comprehend the key features and risks of funds. Standard templates setting out the format of the KFS are available on the SFC website.

Use of Financial Derivative Instruments for Investment Purposes

The SFC distinguishes between UCITS funds which make use of the expanded powers to use financial derivative instruments ("FDI") extensively for investment and non-hedging purposes and those which limit their use of FDI to hedging. Use pf FDI for efficient portfolio management is considered use for non-hedging purposes. Chapter 8.9 of the Code deals with the investment and operational requirements of non-UCITS funds that invest in FDI.

Time Frame for Authorisation

Within five working days of receiving a fund application, the SFC decides whether the application will be formally accepted. If so, the SFC will give its first round of comments within 14 working days and also indicate whether the application is to be treated as standard or non-standard. Standard applications are fast-tracked with an aim that SFC authorisation (if granted) will be given on average between one to two months from the formal application acceptance. Non-standard applications are processed with an aim that SFC authorisation will be given on average within two to three months from formal acceptance.
The timetable for obtaining SFC authorisation will, to a large extent, depend on whether the management company has previously been approved by the SFC to manage SFC authorised funds, whether the custodian / trustee has previously been approved for SFC authorised funds and the nature of the fund for which authorisation is being sought. Under the terms of the SFC application procedures, if SFC authorisation of the fund is not granted within six months from the date an application is taken up by the SFC, such application will automatically lapse.

Fees and Expenses

The SFC's fees for an umbrella fund comprise of the following:

	For the umbrella fund	For each sub-fund
Application Fee	HKD 40,000	HKD 5,000
Authorisation Fee	HKD 20,000	HKD 2,500
Annual Fee	HKD 7,500	HKD 4,500

Please note that the SFC's application fee is not refundable in the event that the fund fails to obtain authorisation or where an application lapses for want of authorisation being granted within the requisite six months, as noted above. The authorisation and the first annual fees are payable upon, and a pre-requisite to, SFC authorisation being granted.

As part of the authorisation process, the fund will have to apply for a one-off authorisation for the issue of an advertisement for the fund. After such authorisation is obtained, the fund will not have to apply for authorisation for any advertisement issued thereafter provided that (i) the issuer of any such advertisement has obtained the relevant SFC licence to do so, (ii) the content of any such advertisement is in compliance with the advertising guidelines of the SFC and (ii) each advertisement of the fund will be kept for record for a three-year period.

Local legal fees and costs associated with translations can be obtained as required.

Private Placement

The criteria for an Irish fund to be sold / marketed in Hong Kong on a private placement basis, without having to be authorised by the SFC, are set out below.

General Principle

Different rules apply to the marketing of "Corporate Funds" and "Non-Corporate Funds".

Corporate Funds

Regulatory approval, registration or filing of a fund's offering documents is not required when a Corporate Fund is offered:

- to an unlimited number of "professional investors";
- to no more than 50 people; or
- with a minimum investment of not less than HKD 500,000 (approximately US$65,000).

"Professional investors", as defined in the SFO, include various institutional investors; trust corporations with at least HKD 40 million in assets; and individuals, corporations and partnerships with investment portfolios of at least HKD 8 million.

It is possible to combine the offerings at the first two bullet points above (that is, to offer the fund to an unlimited number of professional investors as well as to no more than 50 non-professional investors).

Non-Corporate Funds

Regulatory approval, registration or filing of a fund's offering documents is not required when a Non-Corporate Fund is offered:

- to an unlimited number of "professional investors"; or
- to no more than 50 people.

It is possible to combine the above.

For the purposes of this section, a "Corporate Fund" means a fund that is constituted as a company and includes a special purpose corporate vehicle that issues notes or bonds as a securitisation. A "Non-Corporate Fund" means a fund that is structured as a limited partnership, a limited liability partnership, a unit trust, or a contractual joint venture.

The principal securities requirements that apply to the offer of interests in Non-Corporate Funds are contained in the SFO. For Corporate Funds, they are contained in the SFO and the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

Prohibitions

Prohibition on Offering Unauthorised Funds

Section 103(1) of the SFO provides that it is an offence to issue, or have in one's possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which one knows contains an invitation to the public:

- to enter into or offer to enter into:
  - an agreement to acquire, dispose of, subscribe for or underwrite securities; or
  - a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite a structured product; or
- to acquire an interest in or participate in, or offer to acquire an interest in or

participate in, a collective investment scheme,

unless the issue is authorised by the SFC.

"Advertisement" is defined very widely and could include, for example, oral communications and websites.

"Issue" includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof whether by any visit in person, in a newspaper, magazine, journal or other publication or by the display of posters or notices, by means of circulars, brochures, pamphlets or handbills, by an exhibition of photographs or film, by way of sound or television broadcasting, by any information system or other electronic device, or by any other means.

"Public" is defined as "the public of Hong Kong" and includes any class of that public.

Prohibition on Cold Calling

Section 174 of the SFO prohibits cold calling. In other words, a licensee (otherwise known as an "intermediary") or its representatives may not make an offer to a person to enter into an agreement to provide financial products or services, nor induce or attempt to induce a person to enter into such an agreement, during or as a consequence of an unsolicited call.

Prohibition on Promotion by Unlicensed Intermediaries

Under the SFO, "dealing in securities" is defined widely to include "the making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or offer to enter into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities". Accordingly, a person who visits Hong Kong for the purpose of promoting a fund to prospective investors would normally be considered to be "dealing in securities". Section 114 of the SFO prohibits a person from carrying on a business of dealing in securities or holding himself as carrying on such a business unless such person is appropriately licensed to undertake such regulated activity.

Section 115 of the SFO provides that if a person actively markets to the public any services that he provides, and if such services would constitute a regulated activity if provided in Hong Kong, then the person would be regarded as carrying on a business in that regulated activity. Accordingly, a person needs to be appropriately licensed before actively marketing his or her services in Hong Kong, even if the person is based outside Hong Kong.

WA R N I N G

The contents of this Hong Kong section have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document you should obtain independent professional advice.

JAPAN

*Mori Hamada & Matsumoto

Overview

Irish investment funds may be sold in Japan by way of public offering or by private placement, with private placements being further divided into two sub-categories; a private placement to qualified institutional investors only, and a private placement to a limited number of investors. The time frame and costs vary depending on the type of offering sought.

It should be noted that any Securities Registration Statement that is required in the case of public offering in Japan to be filed by the Irish fund with the Kanto Local Finance Bureau of the Ministry of Finance Japan must contain all of the information that is required under relevant rules issued by the Central Bank of Ireland (the "Central Bank") and must not contain any information which conflicts with the Irish prospectus.

The prospectus of any Irish domiciled fund being sold in Japan may need to comply with certain requirements. It should be noted that if any supplement or addendum to the Irish prospectus specific to investors domiciled in Japan is prepared, such document will need to be submitted to the Central Bank in advance, to ensure that there are no inconsistencies with the Irish prospectus.

Investment Fund Categorisation and Registrations

Types of Investment Funds

There are two types of foreign collective investment scheme which are recognised under Japanese law.

- Foreign Investment Trusts
- Foreign Investment Corporations

A foreign investment trust is a trust type collective investment scheme and would include an

Irish unit trust (a "Foreign Investment Trust"). A foreign investment corporation is a corporate type collective investment scheme and would include an Irish variable capital company (a "Foreign Investment Corporation").

For the purposes of this section, both types of foreign investment schemes shall be collectively referred to as "Foreign Investment Funds".

Units, shares or bonds issued by Foreign Investment Funds are collectively referred to as "Securities". Holders of Securities of Foreign Investment Funds are referred to as the “Unitholders” or "Shareholders" and the manager of the Foreign Investment Trust and a Foreign Investment Corporation are both referred to as an "Issuer".

Umbrella type funds are recognised under Japanese laws, and [or, but] each sub-fund within an Irish umbrella fund must be registered separately in Japan. If one or more sub-fund(s) in the Irish umbrella fund has been previously registered in Japan, this will significantly expedite the process of registering additional sub-funds within the same umbrella fund.

Categories of Registrations

Foreign Investment Funds are regulated in Japan by two pieces of legislation.

The Financial Instruments and Exchange Act (the "FIE Act")

The FIE Act regulates all financial instruments as defined in the FIE Act including corporate stocks and bonds as well as Securities. The Kanto Local Finance Bureau of the Ministry of Finance Japan (the "KLFB") is the regulator for the purposes of disclosure under the FIE Act.

Since the FIE Act regulates all financial instruments, any company, partnership or other entity that issues any financial instrument is also under the control of the FIE Act as are Foreign Investment Funds.

Public offerings and private placements are dealt with separately in the FIE Act.

Unlike the ITIC Act (as discussed below), the distinction between trust-type and corporate-type vehicles is of little importance under the FIE Act as the FIE Act focuses on the Securities offered rather than on the actual structure of the Foreign Investment Fund.

In the case of public offerings, the Securities of a Foreign Investment Fund must be registered with the KLFB in accordance with the FIE Act in advance of being offered in

Japan unless the registration is exempted by the FIE Act.

The registration requires a disclosure document for potential investors the contents of which are substantially identical to the prospectus to be delivered to potential investors. As long as the Securities are offered in Japan, the Foreign Investment Fund must continue to register the Securities at the start of each offering year and unless all Securities are redeemed in Japan or no shareholders exist in Japan, reports of the Securities must be filed with the KLFB periodically unless otherwise exempted.

If the Securities are only offered by way of private placement, the above registrations and reports are not required.

The Act on Investment Trust and Investment Corporation (the "ITIC Act")

Unlike the FIE Act, the ITIC Act only applies to investment funds. Only entities which satisfy the requirements of the ITIC Act will be allowed to act as Foreign Investment Funds in Japan.

Unlike the FIE Act, the distinction between public offerings and private placements is of little importance under the ITIC Act as the ITIC Act deals with the Issuer of the Securities rather than the Securities they are offering. Registrations under the ITIC Act differentiate between trust-type and corporate-type funds.

The regulator of the ITIC Act is the Financial Services Agency of the Japanese Government (the "FSA").

A Foreign Investment Fund must be registered with the FSA in advance of its Securities being offered in Japan. No periodical reports or updates are required by the ITIC Act other than investment management reports which must be periodically delivered to unitholders and to the FSA unless otherwise exempted. If an amendment is made to the offering or constitutive document of a Foreign Investment Fund, the amending document must be filed with the FSA in advance of the effectiveness of such amendment.

Comparison between the Two Acts

Act	**The Financial Instrument and Exchange Act**	**The Act on Investment Trust and Investment Corporation**
Object	*Securities*	*Foreign Investment Funds*
Regulator	KLFB	FSA
Distinction between Public Offering and Private Placement	Yes	Not important
Primarily Responsible Party	- Issuer and - Distributor in Japan	Issuer
Initial Registration	Securities Registration Statement ("SRS")	Registration Statement concerning Foreign Investment Trust / Registration Statement concerning Foreign Investment Corporation
Continuous Reports	Annual Securities Report; and Semi-Annual Securities Report	None, except Investment Management Report
Amendment to Registration or Reports	Amendment to SRS; and Extraordinary Reports (in the case of substantial change)	Registration Statement of Amendment to Trust Deed of Foreign Investment Trust / Registration Statement of Amendment to Foreign Investment Corporation
Disclosure	Yes (by EDINET)	No

Public Offering and Private Placement

Under Japanese laws, certain registrations and reports are required to be made / filed depending on the type of offering being made. Accordingly, before a Foreign Investment Fund can be offered for sale in Japan, the first decision to be made will be to decide on the type of offering to be made.

As mentioned earlier there are two categories of offering under Japanese laws; public offering and private placement (respectively, "Public Offering" and "Private Placement"). Private Placements are divided into two sub-categories; Private Placement to Qualified Institutional Investors Only (the "QII Private Placement") and Private Placement to Limited Number of Investors (the "49-Investor Private Placement").

The time frame that it takes to complete a registration and the costs involved will depend upon the type of offering.

Private Placement:

The QII Private Placement

The QII Private Placement is commonly referred to as the "Professionals Private Placement" because Qualified Institutional Investors ("QIIs") are considered to be professionals who are deemed to have expert knowledge of and an understanding of investing in securities. Most large institutional investors (such as banks, insurance companies, securities dealers, investment managers, investment corporations and any corporation or individual who has registered with the regulator that it holds sufficient amounts of securities, as required by law) are eligible as QIIs.

It is important to have a distributor or distributors in Japan to verify the QII status of all investors. The number of QIIs that you may solicit is unlimited provided that non-QIIs are not solicited.

From the point of view of the documentation required to be prepared and filings required to be made, the QII Private Placement is the easiest and least expensive offering.

QII Private Placement is also able to avail of exemption from the ITIC requirement to periodically deliver investment management reports to shareholders and to the FSA, provided that its Trust Deed states that an investment management report will not be delivered.

The 49-Investor Private Placement

The 49-Investor Private Placement is a private placement whereby Securities are only offered to a limited number of investors.

The 49-Investor Private Placement counts every person or entity solicited for the Securities, whether a QII or non-QII, towards the limitation of the number of investors, exclusive of the QIIs subject to the QII Transfer Restriction as explained below in the Hybrid Private Placement. It does not matter whether or not they actually subscribe for the Securities. The 49 investors are counted on the basis of any investors solicited over the course of the preceding six month period and the relevant Securities offered are deemed to be any issued

securities the kind of which is identical to the Securities in question. If securities of such kind have already been offered to 49 investors in the preceding six month period then another 49-Investor Private Placement cannot be made. The test of whether there are any issued securities the kind of which is identical to the Securities in question (as set out in the FIE Act) is as follows:

(a) Whether the Issuer of the Securities is identical; and

in the case of a trust-type fund, whether the fund is identical in terms of:

(b-i) Trust assets;

(b-ii) The terms and conditions of redemption of the Foreign Investment Fund and the distribution of profits of the Foreign Investment Fund; and

(b-iii) A redemption period of the Foreign Investment Fund; or

in the case of a corporate-type fund, whether the fund is identical in terms of

(b) the distribution of profits in respect of Securities.

As a general point, as the assets of a sub-fund within an umbrella scheme are segregated from the assets of other sub-funds within the umbrella, units or shares of each sub-fund may be offered by way of a 49-Investor Private Placement.

It is critical to have a distributor or distributors in Japan to monitor the number of solicited investors. The 49-Investor Private Placement is also exempted from the certain obligations imposed on Public Offerings (such as the JSDA Rules, the Selection Standards, and the requirement to register with the KLFB).

The Hybrid Private Placement

This used to be distinguished from an ordinary 49-Investor Private Placement, however, it has been incorporated in a 49-Investor Private Placement pursuant to the FIE Act.

This type of a 49-Investor Private Placement provides that a QII may be excluded from the 49 investor limitation subject to additional requirements (the "Hybrid Private Placement"). The same rules apply to the 49 investor element of the offering as apply for an ordinary 49-Investor Private Placement, while the same rules apply to the QII element of the offering as

apply for an ordinary QII Private Placement.

Although the Hybrid Private Placement gives the greatest flexibility of all Private Placements, as the same offering may be made to both QIIs and to the 49 'non-QII' investors, the requirements for the Hybrid Private Placement are a mix of the requirements of both types of Private Placement. Additionally, the number of solicited non-QII investors must be continuously monitored in addition to verifying the QII status for all QII investors.

Public Offering:

JSDA Rules and Selection Standards

In order to make a public offering in Japan, a Foreign Investment Fund must meet requirements pursuant to the Rules concerning Transaction of Foreign Securities of the Japan Securities Dealers Association (the "JSDA Rules" and the "JSDA", respectively). The JSDA Rules are not legislative provisions but are a set of internal rules which bind distributors in Japan all of who must be members of the JSDA in the selection of foreign investment funds to be distributed in Japan.

The JSDA Rules provide that a JSDA member must confirm certain requirements in advance of the public offering in Japan of Securities of the Foreign Investment Fund.

The selection standards in the JSDA Rules (the "Selection Standards") can be quite burdensome because they typically result in amendments being required to be made to a Foreign Investment Funds offering and constitutive documents. Securities to be offered by way of Private Placement are exempted from the Selection Standards. Accordingly, the making of a Private Placement exempts Foreign Investment Funds from the investment restrictions in the Selection Standards.

Note that it has been established that Irish regulated funds typically comply with all of the JSDA requirements.

The distributor in Japan must submit a Confirmation of Foreign Investment Securities in advance of the Securities to be offered in Japan by way of Public Offering (the "JSDA Submission"). The Selection Standards are detailed below in the section headed Public Offering.

Comparison Amongst the Offerings

Types of Offering	**I. Public Offering**	**II-a. QII PP**	**II-b. 49-Investor PP**	**II-b. Hybrid PP**
Investors	Anybody	QIIs only	Anybody	
Number of Investors	Unlimited		Up to 49	Unlimited QIIs, but up to 49 non-QIIs
Registration with the KLFB	Yes	No		
FSA Registration	Yes			
JSDA Submission	Yes	No		

Time Frame and Costs of Offerings

The time frame and costs vary depending on the type of offering sought. The most expensive component of the offering process is the translation of documentation into Japanese.

We have set out below estimates of the time frames and the Japanese legal cost for an initial registration:

Types of Offering	Time	Estimated legal costs
Public Offering	1.5 – 2.5 months	8.0 – 12 million JPY (80,000 - 120,000 EUR)
QII Private Placement	0.5 – 1.5 months	2.0 – 3.0 million JPY (20,000 – 30,000 EUR)
49-Investor Private Placement	0.5 – 1.5 months	2.0 – 3.0 million JPY (20,000 – 30,000 EUR)
Hybrid Private Placement	0.5 – 1.5 months	2.0 – 3.0 million JPY (20,000 – 30,000 EUR)

Adjustments to Comply with Japanese Laws

Generally Required Adjustments

Generally, in order to be offered in Japan, the structure of a Foreign Investment Trust and a Foreign Investment Corporation must be similar to a Japanese domestic investment trust and a Japanese domestic investment corporation, respectively, as defined in the relevant Japanese laws, and the Japanese regulators have not officially given any directions beyond these definitions on how similar they must be. Although the Japanese authorities are familiar with both Irish corporate and non-corporate structures, there are a number of issues that should still be borne in mind:

- A Foreign Investment Fund must have as its objective the management of its assets through investment, investing more than a half of its assets in Specified Assets. "Specified Assets" mean securities, interests in financial derivative instruments, real estate, lease on real estate and other assets as set out in the FIE Act;
- A Foreign Investment Fund must intend to distribute its Securities to multiple investors; and
- A Foreign Investment Trust must not pay any repurchase, redemption, or distribution proceeds in specie.

Public Offering

Foreign Investment Trusts must have a manager and a trustee pursuant to the JSDA Selection Standards. The Selection Standards for a public offering are summarised as follows:

- the net assets of the Foreign Investment Trust must be not less than JPY100,000,000 or its equivalent in foreign currencies;
- the net assets of the manager who is the issuer of the Foreign Investment Trust or of the investment manager of the Foreign Investment Corporation must be not less than JPY50,000,00 or its equivalent in foreign currencies;
- a bank or a trust company must have been appointed as trustee or custodian to hold the assets of the Foreign Investment Fund;

- a Japanese resident must be appointed as a legal representative of the Issuer;
- the courts of Japan must have jurisdiction in relation to legal proceedings with respect to transactions of Securities acquired by investors in Japan;
- there must be certain restrictions on short selling and borrowing;
- the global risk amount of outstanding derivative transactions and other similar transactions entered into the account of a foreign investment fund, which is to be calculated in accordance with a "reasonable method" set up in advance, shall not exceed a certain ratio if their respective net asset value;
- credit exposures of a foreign investment fund to any single issuer of portfolio securities or counterparty of derivative transactions shall be managed and administered in accordance with a "reasonable method" set up in advance; and
- a change in the directors or officers of the Issuer requires an approval or the consent of the Central Bank of Ireland, the investors, the trustee or any other equivalent person or entity.

The Selection Standards often require changes to an existing Trust Deed or Memorandum and Articles of Association as well as the existing Irish prospectus. As such, it is often easier to provide for a Japanese registration during establishment or to create a new fund specifically for a Public Offering in Japan.

The QII Private Placement

The transfer of securities from a QII to a non-QII is prohibited ("QII Transfer Restriction") as a transfer to non-QIIs would lead to the same result as a Public Offering but without complying with the strict requirements for a Public Offering. For that reason, the FIE Act imposes the following conditions in order to inform potential QII shareholders of the QII Transfer Restriction prior to the acquisition.

Foreign Investment Trust

The most practical way is that the QII Transfer Restriction on the Securities shall be delivered in writing or electronically to an acquirer of the Securities.

The Issuer must not have issued any securities the kind of which is identical to the Securities by way of Public Offering in Japan.

Foreign Investment Corporation

Any solicitation for acquisition must be made on the condition that the acquirer must enter into an agreement that the acquirer shall not transfer the shares to a non-QII (the "Agreement on Transfer Restriction"). The Issuer must not have issued any securities the kind of which is identical to the Securities by way of Public Offering in Japan.

The 49-Investor Private Placement

Foreign Investment Trust

The most practical way is that the transfer restriction on the Securities that a whole lot of the Securities held by a shareholder may be transferred only in whole, not in part, shall be delivered in writing or electronically to an acquirer of the Securities.

The Issuer must not have issued any securities the kind of which is identical to the Securities by way of Public Offering in Japan.

Foreign Investment Corporation

No specific requirements are needed except that the Issuer must not have issued any securities the kind of which is identical to the Securities by way of Public Offering in Japan.

The Hybrid Private Placement

As stated above, the requirements for a Hybrid Private Placement are a combination of the requirements of the QII Private Placement and the 49-Investor Private Placement.

The Registration Process

FSA Registration

Registration Statement for a Foreign Investment Trust / Registration Statement for a Foreign Investment Corporation

In advance of any offering of Securities in Japan, the Foreign Investment Fund must be

registered with the FSA pursuant to the ITIC Act. The documents required are a Registration Statement for a Foreign Investment Trust or a Registration Statement for a Foreign Investment Corporation (collectively, the "FSA Registration").

The FSA Registration must be in Japanese and is made by the Foreign Investment Fund's Japanese legal counsel on behalf of the Foreign Investment Fund.

The FSA Registration is required for both cases of Public Offering and Private Placements.

The first intended date of the offering of the Securities must be stated in the FSA Registration. The offering period may be unlimited. The FSA Registration is effective until its revocation or any amendment to it. While the prospectus is not required as an accompanying document, it is the most crucial document to be translated in order to prepare the FSA Registration.

Timing: Prior to the Offering

The FSA Registration must be made prior to any public offering or private placement. Usually, the date of the FSA Registration is one day prior to the start of the initial offering of the Securities. The Authorisation Certificate from the Central Bank of Ireland, must be obtained well in advance of the date of the FSA Registration so that the copy of the Authorisation Certificate can be filed with the FSA Registration.

Accompanying Documents

- Trust Deed / Memorandum and Articles of Association and any amendments thereto

  The constitutional documents, including any amendments thereto, if any, are required.

- Incumbency Certificate ("IC")

  The representative or representatives of the Issuer in the FSA Registration who execute the POA (detailed below) must be certified to have such authority by way of an incumbency certificate ("IC"). This is usually certified by another officer or director or a company secretary of the Issuer. Certification in an IC by the person who executes the POA is not permitted. The form of an IC is usually provided by Japanese counsel and an executed original of the IC is required.

- Power of Attorney ("POA")

  The Issuer must appoint a Japanese lawyer to represent the Issuer and the representative of the Issuer must certify the appointment by way of a power of attorney ("POA"). The persons who sign the POA will be the representatives of the Issuer in the FSA Registration. The form of a POA is usually provided by Japanese counsel and an executed original of the POA is required.

- Authorisation Certificate

  A copy of the letter of authorisation from the Central Bank of Ireland must accompany the FSA Registration (the "Authorisation Certificate"). The Authorisation Certificate is required for the FSA Registration only, not for the SRS.

- Legal Opinion

  A legal opinion from the Irish legal adviser stating that the Foreign Investment Fund has been duly established and existing under the laws of Ireland is required.

Securities Registration Statement (the "SRS")

The SRS is necessary in order for a Foreign Investment Fund to be offered by way of Public Offering.

The SRS is prepared in Japanese. The SRS generally expires in one year. Accordingly, if it is intended that the Securities will continue to be offered after the first anniversary of the start of the offering, an updated SRS must be filed for the next offering period. As such, you must file an SRS for every offering year. No amendment to the SRS can extend the offering period. The new SRS for the next offering period is an "original" SRS, not an amendment to the SRS for the preceding period.

Any prospectus for a Foreign Investment Fund which is making a Public Offering must be substantially identical to the SRS at all times. Whenever the prospectus is amended, an amendment to the SRS must be filed simultaneously.

Timing: 16 Days Prior to the Offering

The SRS will become effective after full 15 days have elapsed since the filing, exclusive of the filing date and the effective date. Accordingly, the filing date of the SRS must be 16 days

prior to the start of the intended initial offering of the Securities.

Accompanying Documents (together with their Japanese translations)

- Trust Deed/ Memorandum and Articles of Association and any amendments thereto.
- Copy of the Minutes of the Board of Directors of the Issuer.
- Incumbency Certificate ("IC")
- Power of Attorney ("POA")
- Legal Opinion ("LO")

Comparison of Documents Required for the Differing Filings

Types of Filing	**FSA Registration** **no Japanese translation required*	**SRS with the KLFB** **Japanese translation required*
Trust Deed / Memo & Arts	Required	Required
Minutes of Board Meeting about Issuance	No	Required
Incumbency Certificate	Required	Required
Power of Attorney	Required	Required
Certificate of Authorisation	Required	No
Legal Opinion	Required	Required

Continuing Obligations

Amendment to and Termination of the FSA Registration

If a Foreign Investment Fund is being amended or terminated, an amendment to or termination of the FSA Registration will also be required unless the Foreign Investment Fund is otherwise exempted. Attention must be paid to the timing of such registration as under the provision of the ITIC Act it must be prior to the effective date of the amendment or termination. Any such amendment or termination also requires an official Central Bank of Ireland noting letter of such amendment or termination.

Amendment to the SRS and the Extraordinary Report

When a Foreign Investment Fund has been offered by way of Public Offering and its Trust Deed or Prospectus has been amended, the amendments must be disclosed to the public. The disclosure to the public involves changes to both the prospectus and the SRS. In the case of a public offering, certain other material changes may require an immediate detailed disclosure, named an Extraordinary Report.

Annual Securities Report and Semi-Annual Securities Report

In the case of public offering, an Annual Securities Report for each accounting period and a Semi-Annual Securities Report for the first six months of the accounting period must be filed with the KLFB.

Investment Management Report

An investment management report must be prepared and delivered to known shareholders annually for Foreign Investment Trusts. This obligation is exempted for Foreign Investment Trusts which have been offered by way of QII Private Placement provided that its Trust Deed states that an investment management report will not be delivered. Once an investment management report has been prepared, a copy must be filed with the FSA of Japan.

Continuous Obligations

Types of Offering	Public Offering	Private Placement
Amendment to and Termination of the FSA Registration	Required	Required
Amendment to the SRS	Required	No
Extraordinary Report	Required	No
Annual Securities Report and Semi-Annual Securities Report	Required	No
Investment Management Report	Required	Required (QII PP may be exempted.)

KOREA

*Kim & Chang

Overview

Irish investment funds may be sold in Korea by way of public offering or private placement. In both cases, the Irish fund must register in Korea pursuant to the Financial Investment Services and Capital Markets Act, and its subordinate regulations (the "FSCMA") which came into effect on 4 February, 2009.

Since the introduction of FSCMA many offshore funds offered on a private placement basis have been registered under the FSCMA.

It should be noted that if any supplement or addendum to the Irish prospectus, specific to investors domiciled in Korea, is prepared such document will need to be submitted to the Central Bank of Ireland in advance to ensure that there are no inconsistencies with the Irish prospectus.

We have set out below a summary of the various eligibility requirements for the registration of Irish funds in Korea pursuant to the FSCMA.

Registration with the Financial Services Commission

Under the FSCMA regime, all offshore funds to be marketed and / or sold to Korean investors (even if marketed to institutional investors only) are required to be registered with the Financial Services Commission (the “FSC”). The eligibility requirements are lower if the offer is limited to certain Qualified Professional Investors as prescribed under the FSCMA. Please note that an Irish fund may only be offered on a private placement basis where it is offered to Qualified Professional Investors only.

Registration of a Privately Placed Irish Fund

The main eligibility requirements that must be met in order to register an Irish fund with the FSC, where the offer is limited to Qualified Professional Investors, are as follows:

- the fees and expenses to be incurred by the investors are to be clearly disclosed in

the fund documents;

- the asset management company (or general partner) of the offshore fund has not been sanctioned by the Korean regulators, equivalent to an administrative sanction of suspension of business or more severe sanction, or criminal penalties of fine or more severe penalties, for the past 3 years;

- the following entities relating to the offshore fund are not subject to suspension of business; (i) asset manger, (ii) trustee/custodian, (iii) distributor and (iv) administrator;

- the offshore fund has been created and established lawfully in compliance with the laws of the home country;

- the constituent documents of the offshore fund do not violate the laws and regulations of the home country, nor explicitly undermine investor's interests; and

- a supervisory director (if any) of an investment company shall not fall under certain negative qualifications specified by Article 24 of the FSCMA (if the concerned fund is a partnership and it is not required to have a supervisory director under the laws of its establishment, this requirement should not be applicable).

The term "Qualified Professional Investors" under the FSCMA includes the Korean government, the Bank of Korea, certain financial institutions, certain pension funds, certain corporate investors (such as listed companies) and certain high net worth individuals.

Separate from the registration requirements under the FSCMA, certain additional restrictions under the Foreign Exchange Transaction Regulations (the "FETR") may apply to Korean investors when investing in foreign securities (including offshore funds interests).

Registration of a Publicly Offered Irish Fund

With respect to Irish funds sold to non-qualified professional investors in Korea (i.e. a public offering), the discretionary asset manager of the Irish fund should meet certain eligibility criteria relating to the amount of assets under management, net assets and not being subject to sanctions in the past three years.

Publicly offered offshore funds are continuously registered with the FSC and between May and July 2017 alone 59 umbrella funds were registered.

The registration process primarily involves the preparation and submission to the FSC of a securities registration statement ("SRS") and a Korean prospectus, as well as the submission of various supplemental documents. The documents that the Irish fund will need to prepare / provide in connection with its registration in Korea include among other things:

- the Irish prospectus (and any Irish simplified prospectus/key investor information document);
- the most recent annual / semi-annual reports of the fund and of the discretionary asset manager;
- the constitutive documents;
- a no sanction certificate in respect of the discretionary asset manager from its home regulator;
- a certificate of assets under management from the discretionary asset manager;
- a legal opinion from Irish counsel as to the due establishment etc. of the Irish fund; and
- related agreements between the Irish fund and its service providers and agents, if applicable.

A number of the above documents will need to be translated into Korean for registration purposes and the costs of this need to be considered.

Once the draft SRS and the Korean prospectus have been prepared they will be submitted to the FSC for its review. During the informal review process, the FSC may issue comments and / or request certain revisions be made or documents be provided. Once the SRS and Korean prospectus have been finalised, the same will be submitted to the FSC and the SRS will be uploaded to DART, the electronic reporting and disclosure system of the FSC. In the absence of any additional comments from the FSC, the SRS will go "live" 15 days after being accepted.

The FSC does not charge for processing the registration of an Irish fund for sale in Korea. Registration can be completed in about 4 to 6 months (assuming that the required

information / documents are provided in a timely manner and the FSC does not raise any unforeseen issues).

Marketing

Under the FSCMA, marketing activities, even when directed towards Qualified Professional Investors only, are required to be carried out through a local distributor (which includes Korean securities companies, banks, and insurance companies that are licensed to distribute fund products) provided that, if the offshore fund will be offered and sold to only a Korea domiciled feeder fund set up and managed by a Korean asset management company, the offshore fund is not required to appoint its local distributor. If there is no marketing aimed at Korean investors then there is no requirement to engage such company.

There is no specific definition of marketing and it can be construed widely to mean any form of solicitation activity aimed at Korean investors (whether through in-person meetings, telephone calls, sending of offering documents, etc.). As such, it is not permissible for employees of the Irish fund or its discretionary asset manager to market interests in the Irish fund directly to Korean investors. Such marketing efforts should be undertaken by a local distributor. Whether there is marketing activity or not would depend heavily on the specific facts and should be determined on a case-by-case basis.

If the Korean investor contacts the distributing entity on an unsolicited basis and requests information on the Irish fund, it may be permissible to provide them with the relevant information (as it may be argued that such should not be viewed as engaging in onshore marketing, but, rather, simply responding to an unsolicited request) depending on the specific factual context.

MALAYSIA

*Shearn Delamore & Co

Overview

Irish investment funds may be sold in Malaysia in compliance with the provisions of Part VI of the Capital Markets and Services Act 2007 ("CMSA"), which is administered by the Securities Commission of Malaysia ("SC") and the Guidelines for the Offering, Marketing and Distribution of Foreign Funds issued by the SC. ("Foreign Funds Guidelines").

- Islamic funds which are constituted and domiciled in the Dubai International Financial Centre, and notified or registered with the Dubai Financial Services Authority;

- Islamic funds (excluding hedge funds and leveraged funds) which are authorized and primarily regulated by the Securities and Futures Commission Hong Kong ("SFC"), managed by SFC licensed managers, comply with the requirements set out in Appendix 2 to the Foreign Funds Guidelines, and domiciled in Hong Kong or jurisdictions that have broadly implemented International Organisation of Securities Commissions (IOSCO) Principles relating to collective investment schemes and are signatories to IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information;

- A Qualifying Collective Investment Scheme (CIS) under the memorandum of understanding on streamlined authorization framework for cross-border public offers of ASEAN collective investment schemes (ACMF Retail MoU) from Singapore or Thailand; An unlisted fund under the memorandum of understanding concerning co-operation and exchange of information on cross-border offers of ASEAN collective investment schemes to non-retail investors;

- Exchange-traded funds which are index-tracking and non-synthetic (ETF);

- Listed closed-end funds (CEF);

- Islamic funds by the Islamic Corporation for the Development of the Private Sector, declared as an international organization under the International Organisations

(Privileges and Immunities) Act 1992 and any regulation issued under it which are allowed to invest only in the following permitted investments;

- Shares and other securities equivalent to shares that are dealt in on an organized market;
- Sukuk that are dealt in on an organized market;
- Islamic money market instruments that are normally dealt in on the money market;
- Placements in Islamic deposits;
- Units or shares in other Islamic collective investment schemes;
- Islamic financial derivatives; and
- A fund that invests or proposes to invest primarily in income-generating real estate provided that:
    - the units are listed on an exchange specified by the SC and where its securities regulator is a full signatory of the International Organization of Securities Commissions multilateral memorandum of understanding concerning consultation and co-operation, and the exchange of information among securities regulators ("IOSCO MoU");
    - the offering of units is made by a locally licensed securities dealer; and
    - the offering of units is limited to a one-off offering only to sophisticated investors and is not offered to sophisticated investors on a continuous basis.

So only Irish investment funds that fall within the definition of recognized funds in the Foreign Funds Guidelines may be offered, marketed or distributed in Malaysia.

As detailed below the prospectus of any Irish domiciled fund being sold in Malaysia may need to comply with certain requirements. It should be noted that if any supplement or addendum to the Irish prospectus specific to investors domiciled in Malaysia is prepared, such document will need to be submitted to the Central Bank of Ireland in advance to ensure

that there are no inconsistencies with the Irish prospectus.

Regulation of securities

The CMSA regulates securities offerings at two levels:

(1) licensing of regulated activities as defined in Schedule 2 to the CMSA, and
(2) the requirements for issuing or offering of securities set out in Part VI of the CMSA (the "Part VI Provisions").

The definition of "securities" is broadly defined in the CMSA to include shares in or debentures of, a body corporate or an unincorporated body and *unit trusts as defined in the CMSA, and includes any right, option or interest in respect thereof*".

Part VI Requirements

The Part VI Provisions sets out the regulatory framework for marketing and offering of securities in Malaysia, the main requirements of which are referred to below.

Securities Commission's Approval

A person proposing to offer any Irish investment fund in Malaysia has to (a) apply through a local licensed intermediary (referred to as a principal advisor) to the SC for recognition to make available or offer, or make an invitation for purchase or subscription of, the Irish investment fund ("s212 Recognition") unless any express exception in Schedule 5 to the CMSA applies. The exceptions from the need for SC approval are very limited. The SC has discretion whether to grant a s212 Recognition; and (b) register with the SC a disclosure document containing prescribed information ("Disclosure Document").

The Foreign Funds Guidelines set out the requirements that must be complied with by any person who intends to offer, market, or distribute in Malaysia a collective investment scheme that is incorporated, constituted or domiciled in a jurisdiction other than Malaysia and reflect SC's current policy on offering of foreign funds.

S212 Recognition is still required when the Foreign Funds Guidelines apply. Where an Irish investment fund is not a recognised fund under the Foreign Funds Guidelines, an application must first be made to the SC for a waiver from the Foreign Funds Guidelines. If the waiver is granted, then a submission for s212 Recognition may be made.

Submission for s212 Recognition for a retail fund (that is, a fund that is open for subscription to the general public) and a private fund includes-

- a cover letter, specifying the approval/registration sought;
- the fund's deed or constitution, certified by a notary public;
- the applicable fee of RM2,000; and
- In addition for a retail fund, the prospectus of the fund.

Prospectus

A person may not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase securities unless a prospectus has been registered with the SC and the prospectus complies with the provisions of the CMSA. Unless authorised in writing by the SC, a person may not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the SC. A Disclosure Document need not be registered where a prospectus is registered with the SC.

The SC requires, under the Foreign Funds Guidelines, the registration of a prospectus that complies with the prospectus requirements thereunder in relation to a retail fund. The fee for registration of a prospectus of a unit trust scheme is RM3,000.00 and RM100.00 per fund established under the unit trust scheme. Additional requirements set out in the CMSA apply to business trusts.

Under the Foreign Fund Guidelines, no prospectus need be issued in respect of a private fund (which is one that is open for subscription only to qualified investors) but the offering document will have to be deposited with the SC within seven days after it is issued in Malaysia with a fee of RM500 per information memorandum (in addition to the Disclosure Document unless the offering document contains all the information required to be set out in a Disclosure Document). Qualified investors for this purpose are:-

- an individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;
- a corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;
- a unit trust scheme or prescribed investment scheme under the CMSA;

- a company registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the SC to be a trustee for the purposes of the CMSA and has absolute discretion in the investment of the trustee assets of a trust with total net assets exceeding RM10 million or its equivalent in foreign currencies; or

- a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

Division 5 Part VI provisions relating to unit trusts

A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase any unit of a unit trust scheme in Malaysia must enter into a trust deed that has been registered by the SC and satisfies the requirements of section 294 of the CMSA, appoint a trustee approved by the SC (all local trust companies) and comply with the provisions of Division 5 of Part VI of the CMSA (which includes without limitation, the prospectus requirements and specific statutory duties on the management company and the trustee of the unit trust scheme) (collectively the **UT Provisions**) unless the UT Provisions have been disapplied by a Ministerial order.

Subsection 288(2) of the CMSA provides that "*no person except a management company approved by the SC or a person authorised to act on behalf of a management company approved by the SC may issue, offer for subscription or purchase, or invite any person to subscribe for or purchase, any unit.*"

Where an Irish investment fund is structured as a unit trust scheme, units in such Irish investment fund may not be offered to persons in Malaysia except in compliance with Division 5 of Part VI of the CMSA and the SC's applicable guidelines. However, the UT Provisions do not apply to a unit trust scheme that is permitted to be offered in Malaysia to qualified investors under the Foreign Fund Guidelines.[Capital Markets and Services (Non-Application of Division 5 of Part VI)(Wholesale Fund) Order 2012 as amended by the Capital Markets and Services (Non-Application of Division 5 of Part VI)(Wholesale Fund) (Amendment) Order 2015].

Unsolicited Invitation/Call

No unsolicited invitation to subscribe for or purchase, offer for subscription or purchase, or recommendation relating to, any Irish investment fund shall be made except with permission of the SC or as provided in section 255(2) of the CMSA which amongst other permits:

- invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;

- issuing notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the SC.

Restrictions in Advertising

Section 241 of the CMSA prohibits a person from issuing or publishing a notice (defined to include "*any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas*") that offers or invites for subscription or purchase, securities or refers *inter alia* to a prospectus issued in respect of the securities of a corporation (including a foreign company incorporated outside Malaysia, and corporations which have not been formed) or unit trust scheme, an issue intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities subject to the express exceptions provided therein.

Hence, no notice or reference to the prospectus of Irish investment fund should be published or issued in Malaysia unless an exception applies. The limited exceptions relate to:

(i) a notice issued or published before the registration of a prospectus with the consent of the SC containing limited information set out in subsection 241(4) which includes, without limitation, that a prospectus will be issued,

(ii) a notice which complies with subsection 241(5) issued after the registration of a prospectus,

(iii) a preliminary prospectus when the requirements of subsection 241(6) are met,

(iv) specific reports (which relate to those sent by listed corporations to stock exchange, meetings of corporations or unitholders, or news).

Licensing for Regulated Activities

Under the CMSA, any person who carry on a business in any regulated activity or holds himself out as carrying on such business would require a Capital Markets and Services Licence ("CMSL") where it is a corporation unless exempted under Schedule 3 to the CMSA.

Only locally incorporated companies are eligible to hold a CMSL for dealing in securities, or any other regulated activity which permits dealing in securities as an incidental activity to that other regulated activity.

"Dealing in securities" means, whether as principal or agent:–

- acquiring, disposing of, subscribing for or underwriting securities; or
- making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into:
  - any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
  - any agreement, other than a derivative, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

One exception in Schedule 3 to the CMSA that may apply to a foreign entity is where it carries on the regulated activity of dealing in securities for its own account or for its related corporation through a holder of a CMSL who carries on the business of dealing in securities.

THE PEOPLE'S REPUBLIC OF CHINA ("PRC")

*Llinks Law Firm

Overview

As a result of the Memorandum of Understanding ("MOU") signed respectively between the Central Bank of Ireland and the China Securities Regulatory Commission (the "CSRC") and between the Central Bank of Ireland and the China Banking Regulatory Commission (the "CBRC") in October, 2008, public offerings of Irish funds may be made in the PRC through certain qualified domestic institutional investors ("QDII").

It should be noted that if any supplement or addendum to the Irish prospectus, specific to investors domiciled in the PRC, is prepared such document will need to be submitted to the Central Bank of Ireland in advance to ensure that there are no inconsistencies with the Irish prospectus.

Public Offering

It is necessary that a QDII launches and offers its own QDII financial product ("QDII Product") in China to raise the funds for investment in an Irish fund product. Although in practice a QDII Product may repackage an Irish fund and sell that to the public, the offering documents of a QDII Product cannot direct to a specific Irish fund product.
Under the relevant QDII regulations, the investment of the proceeds raised through the QDII Products must be allocated to a basket of different products for risk control purpose. In that sense, it is not exactly correct to say that an Irish fund can be sold by way of public offering in PRC through QDII.

There are four types of QDIIs in the PRC as follows:

- Commercial Bank ("CB")
- Mutual Fund management Companies("MFMC") and Securities Companies ("SC")
- Insurance Companies ("IC") and Insurance Asset Management Companies ("IAMC")
- Trust Companies ("TC")

A MFMC may sell its QDII Product by way of public offering – it can publish a prospectus in the press to solicit potential investors to invest in the product.

A CB may publically distribute the offering document, e.g. publishing it on its website, and sell the product to its retail customers. Therefore, a CB may sell its QDII Product by way of public offering.

A SC, IC, IAMC or a TC may not sell its QDII Product by way of public offering.

An IC is allowed to use its own money (including premiums) as well as other permitted monies, and an IAMC is only allowed to use its own money by using its own QDII quota, to invest in an Irish fund product and in no event can it offer an Irish fund product to its customers to raise funds for investment in an Irish fund product.

As such, technically where an Irish fund is sold indirectly through a QDII, it is still not exactly correct to say that it is sold by way of public offering. Indeed, since an Irish fund could be sold to one or more QDIIs, arguably such sale could be regarded as “private placement”.

Private Placement

Since there exist various QDII regulations in China, there are regulations governing the sale of Irish funds in PRC by way of “private placement”. In addition, there are other channels, such as Qualified Domestic Limited Partnership pilot regime (known as QDLP), Qualified Domestic Investment Enterprise pilot regime (known as QDIE) and some national investment entities/vehicles for domestic investors to make overseas investment, and Irish funds could be offered in PRC through such channels by way of “private placement”.

SINGAPORE

*Rajah & Tann

Overview

Irish-domiciled investment funds may be sold in Singapore by way of public offering or private placement though a public offering has significant regulatory requirements and challenges.

As detailed below, depending on whether certain criteria are met, the offering of units in any Irish domiciled investment fund being publicly offered in Singapore may need to comply with the prospectus requirements prescribed by the Monetary Authority of Singapore ("MAS").

Public Offer and Private Placement

The offering regime in Singapore allows marketing of offshore funds in Singapore, whether or not those funds are managed by Singapore managers or foreign managers.

The marketing of collective investment scheme in Singapore is governed by the Securities and Futures Act (Cap 289) ("SFA").

There have been changes to the SFA in 2017 (the “New Changes”). Whilst there is no indication when the New Changes will be effective, we do expect that it will come into effect very soon and the discussion below takes into account the New Changes.

Generally, under the SFA, no person shall make an offer of interests in a collective investment scheme ("CIS") in Singapore unless a prospectus is first lodged with the Monetary Authority of Singapore (the "MAS").

Definition of Collective Investment Scheme

A CIS is defined under the SFA as an arrangement in respect of any property:

- under which:

- the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and under which any of the following characteristics are present:
- the property is managed as a while by a manager: or
- the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

- the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title, or benefit in the property or any part of the property or otherwise):

    - to participate in or receive profits, income or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title, or benefit in the property or any part of the property; or to receive sums paid out of such profits, income, or other payments or returns.

Typically, an open ended equity or hedge fund constituted in Ireland would satisfy all of the above criteria and, as such, be considered as a CIS under the SFA.

Marketing of Collective Investment Scheme on a Private or Restricted Basis or to Institutional Investors

Exemptions to prospectus requirements will be available where the CIS is marketed (i) on a private placement basis (ii) only to institutional investors or (iii) as a foreign restricted scheme recognised by the SFA.

Private placement exemption

The prospectus requirements prescribed under the SFA do not apply to an offer that is made to no more than 50 persons in Singapore over a 12-month period.

The aggregate 50 person rule will apply even where separate feeders are being marketed (i.e. 50 persons for all feeders), or where separate classes of shares for different sub-funds are being marketed (i.e. 50 persons for all sub-funds).

In this regard, please note that the rules relating to this exemption state that an offer to an entity or trust established primarily for the purpose of acquiring interests in the CIS will be

treated as an offer to each of the underlying owners / beneficiaries of that entity or trust for the purpose of the 50 person limit.

There are no formal procedural requirements for invoking this exemption. However, it should be noted that any offer should not be accompanied by any advertisement offering or calling attention to the offer or intended offer (the "Advertisement Restriction").

(Note: Generally the distribution of an offering memorandum which purports to provide information and assist the prospective investor in making investment decisions will not amount to an advertisement.)

Furthermore, no selling or promotional expenses should be paid or incurred with the offer in Singapore other than administrative or professional fees incurred or commissions or fees payable to persons with the appropriate licence or exemption under the SFA, Financial Advisers Act (Cap 110) (the "FAA"), or in any other jurisdiction in dealing with securities or marketing of collective investment scheme (the "Expenses Restriction").

Offer to institutional investors

An exemption from the prospectus requirements is also available for offers to institutional investors including banks, insurance companies, pension funds or other CIS.

Please note that the exemption will only apply if the institutional investor is subscribing for the units as a principal and not as a nominee.

Although there are no limits to the number of institutional investors to whom an offer can be made, this exemption is very limited and is only available to a restricted class of persons which would not necessarily include professional investors generally.

Institutional investors are narrowly defined and essentially include only Singapore financial institution and government agencies. However, when the New Changes come into effect, certain foreign financial institutions will be included under the new definition.

There is no requirement to lodge an information memorandum or other offer documents for approval by the MAS in order to apply for the exemption nor are there any formal procedures for invoking this exemption.

Restricted schemes

The marketing of a CIS under a restricted offer to sophisticated investors may not attract prospectus registration requirements under the SFA.

Exemptions are available where the offer is made only to (i) "relevant persons" (defined below) or (ii) persons who acquire units in the CIS as principal for a consideration of not less than S$200,000.

Offer to accredited investors and certain other persons

Offers made only to “relevant persons” are exempted from the prospectus requirements under the SFA.

“Relevant Persons” are defined to include:

- an accredited investor;
- a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more shareholders, each of whom an accredited investor; and
- a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor.

An exemption from the prospectus requirements is also available where the offer is made on terms that the units may only be acquired by a person as a principal at a consideration of not less than $200,000.00.

In addition, similar Advertisement Restrictions and Expenses Restrictions as set out above must be complied with.

Furthermore, before offers are made under any of the exemptions above, the MAS must be satisfied that the manager of the scheme is (i) a fit and proper person (as determined by the relevant guideline issued by the MAS) and (ii) licensed to carry out fund management activities in the jurisdiction of its principle place of business.

A notification of the offer must be submitted to the MAS before any offer to be made under the exemption. This notification can be done online, via a platform known as CISNET. Upon

submission, the MAS will process the notification, and if there are no queries or objections raised by the MAS, the MAS will enter the CIS into its list of Restricted Schemes.

The usual processing time from the time of submission of the notification (assuming there are no queries from the MAS) is about two to three business days.

Ongoing Compliance

It is worthy to note that the person to whom the offer is made under the restricted scheme outlined above should be informed in writing of the fact that (i) the scheme is not authorised or recognised by the MAS and units in the scheme are not allowed to be offered to the retail public and (ii) any written material issued in connection with the offer is not a prospectus as defined in the SFA and accordingly, statutory liability under the SFA in relation to the content of the prospectus will not apply.

Certain statutory disclosures are also required to be include in the information memorandum when offering to investors in Singapore.

Marketing of Collective Investment Scheme to the Public in Singapore

A CIS seeking to offer its units to the public in Singapore will be required to (i) seek approval from the MAS as a 'recognised scheme' and (ii) comply with the prospectus requirements prescribed under the SFA.

The CIS will be approved by the MAS as a ‘recognised scheme’ if:

- the laws and practices of the jurisdiction under which the scheme and its manager are constituted give Singapore investors protection that is equivalent to the protection afforded under the SFA in the case of comparable authorised schemes;
- there is a manager for the scheme which is licensed or regulated in the jurisdiction of its principal place of business and a fit and proper person in the opinion of the MAS;
- the MAS has been furnished with information regarding the situation of the registered office of the foreign company or the manager, the name and contact particulars of the representative and such other information as the MAS may require;
- the scheme, the manager and the trustee for the scheme, where applicable, comply with the SFA and the Code on Collective Investment Scheme issued by the MAS;

and

- the manager (together with its related companies) is managing at least S$500 million of discretionary funds in Singapore.

Application for approval as recognised scheme

An application for approval as a 'recognised scheme' must be submitted to the MAS well before the proposed launch date of the scheme.

The fund or the foreign manager will have to submit Form 2 (obtainable from the MAS website) together with the relevant application fee (set out below) and the following documents:

- evidence of the scheme's registered status in the jurisdiction in which the scheme will be principally regulated ("Regulator");
- if the scheme is authorised as UCITS III in the European Union and intends to use of invest in financial derivative instruments:
    - documentation of the scheme's risk management process filed with the Regulator; and
    - where applicable, evidence that the risk management process has been approved by the Regulator.

Lodgement and registration of prospectus

A prospectus in compliance with the SFA must be lodged and registered with the MAS if the CIS is to be marketed to the public in Singapore.

The foreign prospectus can be submitted either on its own or together with a Singapore wrapper to the foreign prospectus so long as it is in compliance with the SFA.

Documents required for lodgement and registration of prospectus

The following documents will be required for the lodgement of the prospectus:

- The prospectus executed in accordance with the requirements prescribed under the SFA.

- Form 6 (obtainable from the MAS website) and the relevant application fee (set out below).

- An undertaking from the CIS and the manager that it will not, at any time after the registration of the prospectus and before the expiration of 12 months from the date of registration by the MAS of the prospectus, make an exempt offer in respect of the same CIS unless the relevant notification requirement prescribed under the of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 ("SF(OI)(CIS)R") has been satisfied.

The CIS should not offer, sell or issue any units on the basis of the registered prospectus after the expiration of 12 months from the date of registration by the MAS.

Thereafter, offers can only be made after an up-dated prospectus has been re-lodged and registered with the MAS.

A new prospectus may be lodged if the prospectus is required to be updated within the 12 months after registration. Otherwise, a supplementary or replacement prospectus may be lodged.

Disclosure requirements

Where applicable, the CIS is also required to comply with the following disclosure requirements prescribed under the Code on Collective Investment Scheme:

- Where a recognised scheme intends to use or invest in financial derivatives, a prominent statement drawing to this section should be included in the marketing material of the recognised scheme.

- Where the NAV of the recognised scheme is likely to have high volatility due of its investment policies or portfolio management techniques, a prominent statement drawing attention to this possibility should be included in the marketing material of the recognised scheme.

Marketing in Singapore

Persons marketing or distributing CIS are regulated under the provisions of the FAA, and would be required to hold a financial adviser's licence or invoke an applicable exemption from such licence.

Typically, the role of a distributor in Singapore is performed by financial institutions such as banks, stockbrokers and financial planners with the appropriate licence or exemption.

A foreign investment fund or its manager should seek advice on this and avoid carrying out any marketing activity frequently in Singapore without either obtaining the appropriate licence or exemption itself or appointing a distributor with the appropriate licence.

TAIWAN

*Russin & Vecchi

Overview

Irish investment funds may be sold in Taiwan by way of public offering or private placement.

There is also a separate regime for funds to be sold to non-residents of Taiwan (including non-Taiwan companies owned and controlled by Taiwanese persons) through what are called "offshore units" of banks, securities houses and insurance companies (i.e. "units" which are physically located in Taiwan but deal only with non-resident customers) without registration for public offering or complying with private placement requirements.

Public offerings must comply with the Rules Governing Offshore Funds (the “Rules”) which were introduced by the Taiwan Financial Supervisory Commission (the “FSC”) pursuant to the Securities Investment Trust and Consulting Law (the “SITC Law”).

The private placement of Irish funds in Taiwan is governed primarily by the SITC Law as well as by Articles 52 to 54 of the Rules.

As detailed below the prospectus of any Irish domiciled fund being sold in Taiwan may need to comply with certain requirements. It should be noted that where any Investors Information Summary (as defined below) is prepared it will need to be submitted to the Central Bank in advance to ensure that there are no inconsistencies with the Irish prospectus. If any supplement or addendum to the Irish prospectus, specific to Taiwanese domiciled investors, is also prepared, this document will also need to be submitted in advance to the Central Bank.

Public Offering

The public offering of a fund in Taiwan is governed by the Rules. The Rules require that the discretionary asset manager (“Manager”) of the fund or an entity appointed by such Manager (the “Offshore Fund Entity”) appoints a qualified Taiwan master agent (“Master Agent”) which Master Agent makes application under a two-step process for approval before such

fund may be publicly offered in Taiwan.

First, the offshore fund must be vetted by the Securities Investment Trust and Consulting Association of the ROC ("SITCA"). After vetting by SITCA is complete, the application will be examined and approved by the FSC before the offshore fund is eligible for public offering in Taiwan.

Each sub-fund in an umbrella fund must be approved separately. Even if one or more sub-funds in the same umbrella fund have been already approved in Taiwan, a new application must be filed for approval of further sub-funds. The approval process will be the same for Irish UCITS or non-UCITS funds.

Taiwanese law requires that a Master Agent submit an application to SITCA to register an offshore fund. As such, the Offshore Fund Entity must appoint a qualified Master Agent as its key point of contact and representative in Taiwan. The Master Agent will subsequently appoint distributors ("Distributors") (i.e., banks, trust enterprises, securities brokers, securities investment trust enterprises ("SITEs") or securities investment consulting enterprises ("SICEs")) which may actively promote, advertise and sell the fund.

Eligible Offshore Funds

In order to be approved by the FSC the fund proposed to be publicly offered in Taiwan and its Manager must meet certain qualifications:

Discretionary Asset Manager Qualifications

- The total net assets of the funds under management must exceed US$ 2 billion. In calculating the total net assts of the funds under management, and whether they exceed the US$ 2 billion threshold, the FSC takes into account all assets managed by the Manager, its parent company and its subsidiaries, but excludes sister companies and other affiliates. Pension funds, retirement funds, and discretionary investment management accounts of private clients or institutional investors are also excluded from the calculation of the total assets.

- The Manager must have been established / incorporated for more than two (2) years.

- The Manager must not have been subject to any disciplinary actions in the previous two (2) years by the local authority of its home country.

The Offshore Fund's Qualifications

- The fund must have been in existence for more than one (1) year.
- The fund must have been approved for public offering in Ireland.
- The custodian of the fund or the parent company of the custodian must have certain minimum credit ratings from a rating agency recognised by the FSC (for example, a long-term credit rating of BBB- or above and a short-term credit rating of A-3 or above from Standard & Poor's Corporation, or equivalent credit ratings from Moody's, Fitch Ratings or Taiwan Ratings).
- Investment by the fund in Mainland China are limited to investment in securities to securities traded on Mainland China exchange and bonds traded in the Chinese Interbank Bond Market and the aggregate amount of such investments must not exceed the percentage prescribed by the FSC (currently 10% of the net asset value of the fund) ("Mainland China Investment Limit").
- Unless a specific waiver is requested and obtained from the FSC, (i) the risk exposure of the non offset position in derivative products held by the offshore fund for purposes of increase of investment efficiency is not permitted to exceed 40% of net asset value of such offshore fund and (ii) the total of the non offset short position in derivative products held by an offshore fund for hedging purposes is not permitted to exceed the total market value of the relevant securities held by such offshore fund ("Derivatives Investment Limit").
- Taiwanese investors are not permitted to hold in excess of a percentage prescribed by the FSC (currently 50% of the net asset value of the fund).
- The fund is not permitted to invest in Taiwanese securities beyond a percentage prescribed by the FSC (currently 50% of the net asset value of the fund) ("R.O.C. Investment Restriction").
- The fund must not be denominated in New Taiwan Dollars or Renminbi.
- The Fund must be identified as an equity fund, a fixed income/bond fund, a balanced fund or a money market fund and meet the criteria for being categorized as such type of fund as set by SITCA (e.g. to be an equity fund, the fund must invest at least

70 % of its asset under management ("AUM") in equity securities).

- The fund must not invest in gold, commodities and / or real estate.
- Such other requirements as may be imposed by the FSC from time to time which at present include that the fund size must not less than US$100 million and that no Master Agent may register more than one high yield bond fund.

The Rules provide that the requirements under Items 1 and 5 above are applicable unless specifically exempted by the FSC or unless the jurisdiction in which the fund is domiciled is recognised by Taiwan. The latter reflects the intention of FSC to introduce a recognised jurisdiction scheme. The FSC, to date, has not published a list of recognised jurisdictions, although the FSC is working on this. A jurisdiction would be recognised by the FSC if its regulatory authority enters into an information exchange agreement with the FSC and the level of investor protection under the laws and regulations of such jurisdiction is not less protective than that in Taiwan.

There is an "incentive program" under which an offshore Fund Entity meeting certain criteria may, on an annual basis, apply for "recognition" and then, if recognized, elect certain benefits which include, inter alia, being able to (i) expedite the timeline for review of an application for derivative waivers for the relevant offshore fund; (ii) expedite the timeline for review and approval of a new fund application; (iii) apply to register three funds at one time, (iv) apply to register new types of offshore funds; or (v) increase the aggregate amount invested in Mainland China securities from 10% to 30% of the net asset value of such offshore fund.

Contribution Requirements

In order to register funds for public sale, the Offshore Fund Entity must "contribute" to the development of the onshore asset management business by one of six specified means depending on whether the Offshore Fund Entity or its affiliates maintain a presence in Taiwan and the total amount of Taiwan originated assets under Management ("Taiwan AUM") invested in the Offshore Fund Entity's funds. The most common means of contribution is to make an annual donation to the Securities and Futures Institute of 0.01% of the previous year's average monthly Taiwan AUM.

Agents

The appointment of the Master Agent needs to be documented in the form of a written contract which must contain certain required provisions prescribed by the SITCA and approved by the FSC. Among others, examples of key provisions to be included in the Master Agent Agreement are:

- the names and addresses of the Offshore Fund Entity and the Master Agent;
- the rights, obligations and responsibilities of the Offshore Fund Entity and the Master Agent;
- the scope of services to be provided by the Master Agent and manner in which services will be provided;
- the payment method of remuneration and expenses by the Offshore Fund Entity to the master agent; and
- the terms for amendment and termination of the Master Agent Agreement.

Master Agent

Any SITE, SICE or securities broker may be appointed as Master Agent of the Offshore Fund Entity provided that the SITE, SICE or securities broker meets the qualifications stipulated in the Rules. While each Offshore Fund Entity may only appoint one Master Agent, a Master Agent may be appointed to act for one or more Offshore Fund Entities.

The role and responsibilities of the Master Agent include:

- production of relevant information such as the Investor Information Summery and the Chinese language version of the Prospectus and delivery of such information to Distributors and investors;
- acting as the agent for litigious matters and delivery of documents of the Offshore Fund Entity in Taiwan;
- communication with the Offshore Fund Entity, and provision of relevant issuance and transaction information on the relevant offshore fund to investors;

- forwarding transaction instructions for purchase, redemption or transfer of offshore funds from the investor to the Offshore Fund Entity;
- assisting in matters related to protection of rights of investors in events where the Master Agent is not at fault; and
- any other matters as provided by laws, regulations or FSC rulings.

The Master Agent is also subject to know your product, sales channel oversight and minimum staffing requirements, as well as to extensive reporting requirements to the FSC in relation to dealings of and material changes to the offshore fund for which it acts as the Master Agent.

Distributors

All distributions of offshore funds in Taiwan must be handled by the Master Agent itself and / or through the Distributors appointed by the Master Agent. The Master Agent will enter into agreements with the Distributors (which must be SICEs, SITEs, securities brokers, banks or trust enterprises) for the distribution of the funds' units / shares. The qualifications that Distributors must meet are less stringent than those to be met by the Master Agent.

Application for Registration

An application for registering the fund must be filed by the Master Agent with SITCA for its prior vetting and subsequently forwarded by SITCA to the FSC for its approval before the offshore fund may be publicly offered in Taiwan. No more than 1 fund may be included in any one application and all such funds must be under the management of the same fund management entity.

Assuming a Derivative Investment Limit waiver is not requested, the vetting process at the SITCA level will take several weeks and the process at the FSC level will take 2 to 3 months. If a waiver of the Derivatives Investment Limit is requested, the process will take considerably longer. The fee charged by SITCA is generally NT$3,500 (approximately US$120) for one fund and may vary based on the compliance track record of the Master Agent.

The following documents must be filed with SITCA for vetting before being forwarded to the FSC for approval:

- The most recent Prospectus and a Chinese translation thereof;
- The most recent audited annual report of the relevant fund together with a summary Chinese translation thereof;
- A certificate issued by an accounting firm to verify that (i) the total net asset value of the funds managed by the Manager exceeds US$ 2 billion and (ii) the fund has been established for at least one (1) year;
- A certified copy of the Certificate of Incorporation (or equivalent document) of the Manager evidencing that it has been incorporated for more than two (2) years;
- A statement from the managing director or chairman of the Manager to verify that such Manager has not been sanctioned by the competent authorities in its home country within the most recent two (2) years;
- The executed Master Agent Agreement between the Offshore Fund Entity and the Master Agent;
- A personnel training plan between the Offshore Fund Entity and the Master Agent, setting out the personnel training plan for the relevant fund;
- A chart setting out the personnel allocation and fund distribution channels of the Master Agent in a prescribed format.
- A copy of documents evidencing the implementation of the personnel training plan, including a list of the training courses, the attendance sheets, the number of persons attending each training course and the number of hours of such training (not required if applicant has not previously acted as a Master Agent).
- Documents stating what training programs will be provided to the personnel of the Master Agent by the Manager for the coming year, which plan must be consistent with the personnel training plan.
- A written explanation from the Master Agent as to the allocation of product analysis personnel and channel service personnel of the Master Agent to evidence that the number of such personnel meets the minimum requirements set out by the FSC.
- A certificate from a director of the Manager verifying the approval for public offering of the

relevant fund from the Central Bank of Ireland;

- A letter of undertaking from a director of the Offshore Fund Entity agreeing to provide relevant corporate documents related to the subscription, redemption or transfer of the relevant fund and/or information related to investors' rights to FSC upon request;

- A statement issued by the Manager confirming that the types and scope of foreign securities in which the relevant fund invests is in compliance with Taiwan regulations, together with the details of the holdings of the relevant fund(s) as of the end of the most recent fiscal quarter to show that the relevant fund (i) does not invest in gold, commodities or real estate, (ii) does not exceed the Mainland China Investment Limit, and (iii) does not exceed the R.O.C. Investment Restriction;

- An undertaking by the Manager to comply with the Derivatives Investment Limit together with a detailed explanation of the Manager's internal control system to assure compliance with such limit or, alternatively, an application for a "special" approval to be exempted from the Derivatives Investment Limit together with supporting documents required for such waiver application;

- A statement evaluating the fund size and an analysis of liquidity risk breakdown by jurisdiction and asset class, together with the fund size of each month for the most recent six (6) months;

- Opinions issued by an R.O.C. lawyer stating that the level of protection for investors in the relevant Manager's place of registration and in Ireland (as the fund's place of registration) is not less protective than that in the R.O.C.;

- The most recent audited financial reports of the Manager;

- A document evidencing the rating of the custodian of the relevant fund;

- An Investor Information Summary prepared in Chinese in prescribed form;

- Documents evidencing that the Master Agent meets qualification requirements;

- Documents evidencing posting of the required business operation bond by the Master Agent;

- A letter of undertaking from the Master Agent stating that each Distributor (if any)

meets relevant qualification requirements, together with the relevant Distribution Agreements and List of Distributors (if there is more than one Distributor);

- A document evidencing the Master Agent's membership in SITCA;
- A document in prescribed form setting out basic Information of the fund;
- A certificate from SITCA verifying that the internal auditor and business personnel, (at least three business personnel) of the Master Agent are sufficient and competent and a copy of the lease agreement and photographs of the information transmission system to obtain immediate investment and trading information;
- A statement from the Master Agent confirming that it has not been sanctioned by the FSC (or any other regulator) as set out in the Rules;
- A copy of the Master Agent's most recent audited financial statements;
- A copy of the Master Agent's and each Distributor's internal control and internal audit system which must contain the items as set out in the Rules;
- A copy of the agreement between the Master Agent and the Taiwan Depository and Clearing Corporation;
- A checklist of the items covered by the applications in prescribed form;
- A global sales plan showing that the relevant fund is being actively marketed in jurisdictions other than Taiwan;
- A written explanation from the Master Agent as to how the relevant fund can be distinguished from other funds already registered by such Master Agent;
- Fact Sheet for the funds; and
- The name, e-mail address, telephone number and other contact details of the relevant person in the Central Bank of Ireland for FSC to directly to confirm Irish regulatory matters related to the relevant fund.
- If the relevant fund employs anti-dilution measures, a detailed explanation of such anti-dilution measures which should include the timing or the threshold for triggering anti-

dilution measures, the range of adjustment, the rationale for setting the relevant standards impact on investors, the most recent actual use of such anti-dilution measures and how the Manager assures the reasonableness and fairness of such measures.

- A written explanation from the Master Agent as to how it controls the percentage invested by Taiwanese investors in the fund in order to be in compliance with the upper limit Taiwanese investors' investment as prescribed in Taiwan regulations.

- A written response to certain anti-money laundering questions with respect to the relevant fund raised by the FSC.

- A written explanation from the Master Agent as to the necessity of registering the fund and whether the fund's cash positions are sufficient to support the liquidity requirements when liquidation.

- A written explanation from the Master Agent as to the Manager meeting the specific contributions requirements as referred to in Article 24, Paragraph 1, Item 4 of the Rules.

- A self-checklist from the Master Agent as to items of operation relevant to application for approval of public announcement requirements in prescribed form and the statement from the Master Agent as to the information provided in the self-checklist are true and correct.

Except for those documents issued by a regulatory authority, self-regulatory body or a CPA in original form, all supporting documents issued outside of Taiwan to be submitted must be authenticated in one of the following manners:

- authentication by the representative office of the ROC in the place where the party issuing the document is situated;

- certification by a local court or government agency in the place where the party issuing the document is located; or

- notarisation in the place where the party issuing the document is situated.

Marketing

When a Master Agent or its appointed Distributor conducts business for the sale and offering of funds in Taiwan and undertakes advertisements, road shows and other promotional

activities, it should abide by the SITC Law, the Rules and relevant regulations.

Prohibited Marketing Activities

While engaging in advertisements, road shows and any other promotional activities relating to a fund, a Master Agent or its Distributor is not permitted to do certain things, which include but are not limited to the following:

- Use the approval by the FSC of fund as a guarantee of the fund's performance;
- Mislead others to believe the security of principal or profitability;
- Offer gifts or any other benefits to entice others to purchase the funds;
- Exaggerate past business records or carry out advertisements which discredit competitors;
- Engage in fraud, deceit or other activities obviously inconsistent with the facts or with the intent to deliberately mislead third parties;
- Carry out advertisements, road shows, or other promotional activities for a fund that is not yet approved by the FSC;
- Provide materials in violation of the law, regulations, agreements or the prospectus;
- Make predictions as to the future performance of offshore funds;
- Be involved in speculation on NT Dollar exchange rates;
- Violate the self-regulation governing advertisements and promoting activities promulgated by SITCA ; or
- Conduct any other activities that would have a negative impact on investors' rights.

In the event that a Distributor appointed by a Master Agent conducts any prohibited marketing activities, the Master Agent and Distributor shall be jointly and severally responsible for any liabilities arising therefrom according to the relevant laws and rules.

Warning Language

While advertising for the offering and sale of a fund by a Master Agent or its Distributor, one shall state the following warning language in notable colour, font or manner. The messages conveyed in advertisements are required to be clear and distinct.

Print advertisements for funds other than principal-guaranteed funds and funds appealing to investment in high yields bonds must include the following wording: *"This fund has been approved or agreed to be effective by FSC. However, there is no guarantee that it is risk-free. The past performance of a fund manager does not guarantee a minimum investment return. Investors should read through the prospectus before purchasing."* For principal-guaranteed funds, funds appealing to investment in high yields bonds and funds the interests of which may be paid out of the capital, the warning language is required to be expanded to make clearer for investors the correspondent investment risks.

In the event of advertising through broadcasting, television, movies or other similar means using images or sound, one shall disclose the following content: *"Investing in funds is not risk-free. The past performance of a fund manager does not warrant a minimum investment return. Investors should read through the prospectus (investor information summary) carefully before purchasing."*

Use of Fund Performance in Advertising Materials

In the event that the fund's performance and sales numbers have been used as advertising or promotional content, the following principles must also be complied with:

- Any reference to fund performance and sales numbers (including awards and rankings) shall note the source and date of the information used.

- If the performance of the fund has been used as advertising content, the performance for at least the last three (3) years must be posted. For a fund that has been established for less than three (3) years, the performance of the fund since establishment must be posted and must not cut out the performance from any specific period of time.

- In the event that there is a comparison with another fund, the statistics or analysis must be of the same type of fund using the same method of calculation.

- No forecast of the investment performance of offshore funds can be made.

- All graphics and images in the advertisement must be clearly shown without distortion.

Maintenance of Marketing Materials

In addition, the Master Agent must report the advertising materials, road shows and other promotional activities to SITCA within ten (10) days after the occurrence of the aforementioned activities. The promotional information, advertising materials, and any other information in connection with advertisements, road shows and other promotional activities must be kept for two (2) years.

Private Placement

There are two regimes for private placement, one for "securities funds" and one for "non-securities funds".

To be categorized as a securities fund, the relevant fund must be a collective investment fund which invests in securities. Funds that invest in other asset classes (gold, real estate, commodities, currencies etc.) and/or derivatives linked to such other asset classes are not treated as securities funds. Also, private equity funds are not treated as securities funds. If the fund being privately placed is a feeder fund, no more than 40% of the net asset value of the feeder fund is permitted to be invested in underlying funds which do not qualify as securities funds under the above test. All funds not qualified as securities funds are treated as non-securities funds.

Private Placement of Securities Funds

Legal Framework and Qualifications

The private placement of funds in Taiwan is governed primarily by the SITC Law as well as by Articles 52 to 54 of the Rules and various sub-regulations promulgated hereunder.

Manager Qualification

The private placement of securities in investment funds to Institutional Investors (see definition below), does not require the relevant Manager to meet any specific qualification requirements. However, for private placement to Sophisticated Investors (see definition

below), the relevant Manager must be licensed or qualified to engage in an asset management business in its home country.

Fund Qualification

The fund must be a securities fund (see above).

Onshore Securities Funds Private Placement Agent

The Manager may, itself, or through a Taiwan licensed securities broker, SICE, SITE, bank or trust enterprise ("Onshore Securities Funds Private Placement Agent") privately place unregistered securities investment funds to Institutional Investors. However, if a securities investment fund is to be privately placed to Sophisticated Investors, the Manager is not permitted to directly place the fund, itself, but, rather, must privately place the relevant fund in Taiwan through an Onshore Securities Funds Private Placement Agent which has:

Onshore Private Placement Agent

The Manager may, itself, or through a Taiwan licensed securities broker, SICE, SITE, bank or trust enterprise ("Onshore Private Placement Agent") privately place unregistered securities investment funds to Institutional Investors. However, if a securities investment fund is to be privately placed to Sophisticated Investors, the Manager is not permitted to directly place the fund, itself, but, rather, must privately place the relevant fund in Taiwan through an Onshore Private Placement Agent which has:

- paid-in capital, designated operating capital or business operating capital of not less than NT$30,000,000 (approximately US$1,000,000) and net worth of not less than its paid-in capital;
- specified qualified personnel, facilities and internal control reporting and customer assistance systems; and
- Not been sanctioned for specified violations within specified periods.

Qualified Offerees

The private placement of a securities fund in Taiwan may be made to (i) entities in the banking industry, bills industry, trust industry, insurance industry or securities industry, or financial holding companies or such other legal persons or organisations as may be

approved by the FSC, without limitation in number ("Institutional Investors"), and (ii) such natural persons, legal persons, funds or trust that meet conditions prescribed by the FSC, not exceeding 35 in number ("Sophisticated Investors").

"Natural person", as referred to in the definition of Sophisticated Investors, means (i) an individual who has proven net financial assets exceeding NT$30 million (approximately US$1,000,000), or (ii) an individual who is making a specific investment exceeding NT$ 3 million (approximately US$100,000) and the investor's total discretionary account investments and fund investments with the relevant Onshore Securities Funds Private Placement Agent (including the aforementioned single fund investment) exceed NT$ 15 million (approximately US$500,000) and who represents that he/she has financial assets of NT$ 30 million or more. A "natural person" is also required to have sufficient professional knowledge or trading experience in financial products.

"Legal person, fund or trust", as referred to in the definition of Sophisticated Investors, means a legal person, fund or trust whose total assets exceeding NT$50 million (approximately US$1,666,000) in accordance with its most recent audited financial statement or a trust created pursuant to a trust deed and holding assets in excess of NT$50 million (approximately US$1,666,000). The person authorised by "legal person or fund" to conduct the transactions is also required to have sufficient professional knowledge or trading experience in financial products.

The Offshore Fund Entity or Onshore Securities Funds Private Placement Agent, as applicable, is obligated to conduct due diligence on the potential investors and obtain sufficient evidence from the investors in order to certify to the FSC that such investors are qualified investors.

Resale Restrictions

Privately placed funds are subject to resale restrictions. Specifically, investors are only permitted to resell funds by (i) redemption by the offshore fund, (ii) transfer to an Institutional Investor or Sophisticated Investor, or (iii) transfer by operation of law.

Tax and Litigation Agents

The Manager must appoint a tax agent and a litigation agent in Taiwan. Both the tax agent and the litigation agent must be resident in Taiwan.

The tax agent, in theory, is responsible for filing tax returns and is liable for paying taxes if

the Manager fails to pay. However, at present, no tax filing or payment is required.

The litigation agent is effectively an agent for service of process.

Disclosure of Information to Prospective Investors

The Offshore Fund Entity (or an Onshore Securities Funds Private Placement Agent) shall, upon the reasonable request of an investor who falls within the definition of Sophisticated Investors and wishes to invest in the offshore fund by private placement, provide all relevant financial and business information in respect of the offshore fund prior to completion of the private placement

Marketing

There must not be any general advertisement or public solicitation in respect of the fund. Any advertisements or solicitations made to non-qualified offerees are considered public offerings.

Distribution of marketing materials is permitted if they are specifically distributed to the qualified offerees. However, all marketing materials provided to the qualified offerees must include information that a purchaser of units / shares in the fund is restricted from transferring such units / shares to Taiwanese persons. Unsolicited phone calls, otherwise known as cold calls, specifically targeted at qualified offerees with the intent to induce or attempting to induce them into investing in the funds are permitted, while cold calls made to non-qualified offerees are not. Any violation of this provision will result in the private placement being deemed as a public offering and would be a criminal offence according to Article 107 of the SITC Law.

Filings

Filings must be made with SITCA either by the Onshore Securities Funds Private Placement Agent or, if there is no Onshore Securities Funds Private Placement Agent, by the tax agent or the litigation agent acting on behalf of the relevant Manager.

The First Filing

The first filing must be made within five (5) days after receiving payment of the first Taiwan subscription in the fund with a copy to the Central Bank of the R.O.C. (Taiwan) ("CBC"). The following documents must be submitted to SITCA:

- For Placement to Institutional Investors:

  (i) An investment information chart of the offshore fund privately placed to professional investment institutions in the prescribed form; and

  (ii) A copy of the approval letter issued by the CBC to the Securities Funds Onshore Private Placement Agent (if applicable) regarding relevant foreign exchange business.

- For Placement to Sophisticated Investors:

  (i) A private placement report letter in the prescribed form;

  (ii) Offshore fund basic information chart;

  (iii) A portfolio allocation and Taiwan investor information chart;

  (iv) Internal control system of the Onshore Securities Funds Private Placement Agent;

  (v) Documents evidencing that the Manager is licensed or qualified to engage in asset management business in its home jurisdiction;

  (vi) A copy of the approval letter issued by the CBC to the Onshore Securities Funds Private Placement Agent regarding relevant foreign exchange business;

  (vii) The agreement entered into between the offshore fund entity and the Onshore Securities Funds Private Placement Agent;

  (viii) A Chinese translation of the investment memorandum (or equivalent document); and

  (ix) Investor Information Summary (in Chinese); and

  (x) A letter of undertaking stating that the beneficiaries meet the qualifications set out in Article 52, Paragraph 1, of the Rules and the documents evidencing the same.

Monthly Reporting

After the first time reporting, a monthly report must be submitted to the SITCA by the 10th business day of each month, whether or not there are additional sales or redemptions during the prior month.

- For Placement to Institutional Investors:

  An investment information chart of the offshore fund privately placed to professional investment institutions in prescribed form.

- For Placement to Sophisticated Investors:

  (i) A private placement report letter in the prescribed form;

  (ii) A portfolio allocation and Taiwan investor information chart; and

  (iii) A letter of undertaking stating that the beneficiaries meet the qualifications set out in Article 52, Paragraph 1, of the Rules and the documents evidencing the same.

Fees

SITCA charges a one-time initial filing fee for each private placement report on a graduated scale depending on the number of funds being reported. The filing fees range from NT$10,000 to NT$50,000 (approximately US$330 to $1,670). No filing fee is required for subsequent monthly reports of changes.

Local legal fees and costs associated with translations can be obtained as required.

Offering Documents

The fund manager or Onshore Securities Fund Private Placement Agent, as applicable, is required to provide the investor with a copy of the relevant offering document which, if the offeree is a Sophisticated Investor, must be accompanied by a Chinese translation thereof and an Investor Information Summary in prescribed form.

Other Documentation

With respect to Sophisticated Investors, a document should be obtained representing and warranting that the sophistication requirements have been met. With respect to both Sophisticated Investors and Institutional Investors, a document should be obtained acknowledging that the investors are aware of the resale restrictions.

Other Requirements

The aggregate amount invested in any one privately placed fund by R.O.C. investors is not permitted to exceed ninety percent (90%) of the net asset value of such fund.

Private Placement of Non-Securities Funds

Legal Framework and Qualifications

The private placement of funds in Taiwan is governed primarily by the SITC Law as well as by Articles 52 to 54 of the Rules and various sub-regulations promulgated hereunder, especially FSC Letter Jin-Guan-Zheng-Tou-Zi. No. 1030045271.

Manager Qualification

For private placement of non-securities investment funds to Institutional Investors ("Professional Institutional Investors"), the relevant Manager need not meet any specific qualification requirements.

Fund Qualification

Non-securities funds are any funds which "do not have the nature of a securities fund" and include private equity funds.

Onshore Non-Securities Fund Private Placement Agent

The Manager must appoint a qualified Taiwan SICE, SITE, securities firm or bank as an Onshore Non-Securities Fund Private Placement Agent and such Agent must meet capital and staffing requirements and obtain regulatory approval to act for the Manager. Once appointed and approved, an Onshore Non-Securities Fund Private Placement Agent is permitted to (i) meet with, and promote the relevant funds to, Taiwanese Institutions which

qualify as Professional Institutional Investors, (ii) facilitate subscriptions, (iii) conduct KYC, etc. so long as such is done on a private one-on-one basis (e.g. no advertising or public promotion is permitted). Representatives of the Managers are also permitted to travel into Taiwan to meet such investors together with the Non Securities Fund Placement Agent but not independently.

To qualify as Onshore Non-Securities Fund Private Placement Agents for offshore funds under the Non-Securities Funds placement regime, SITEs/SICEs are required to satisfy the following requirements and obtain FSC approval:

- the SITE/SICE must have paid-in capital of not less than NT$70,000,000 (approximately US$2,200,000);;
- unless the SITE/SICE has held its business license for less than one full fiscal year, the SICE/SITE must have net worth, as of the date of its most recent audited financial statements, of no less than the paid-in capital;
- the SITE/SICE must have the necessary information transmission facilities for immediate access to relevant investment and transaction information of the offshore fund entity;
- the SITE/SICE must have not been sanctioned for violations of specified regulations within specified periods of time; and
- the SITE/SICE must have specified business personnel and internal auditors meeting specific qualification requirements.
- Banks that hold a trust license are not required to obtain any additional license/approval to purchase qualifying Non-Securities funds in trust on behalf of Professional Institutional Investors and securities firms that hold a license to broker foreign securities are permitted to purchase qualifying non-securities funds as Onshore Non-Securities Fund Private Placement Agent for Professional Institutional Investors without any additional license/approval.

Qualified Offerees

For non-securities funds, “professional institutional investors” consist of:

- foreign and domestic banks, securities firms, futures enterprises, insurance

companies, fund management companies and governmental investment institutions;

- foreign and domestic government funds, pension funds, mutual funds, unit trusts, the funds managed by the financial service enterprises in accordance with the Securities Investment Trust and Consulting Law, the Futures Trading Law or the Trust Enterprise Law, or the assets under mandate for investment accepted by financial service enterprises, which are delivered or conveyed under the trust by clients; and

- other institutions as designated by the FSC. (To date, we are not aware of any other institutions being so designated by the FSC.)

Resale Restrictions

Privately placed non-securities funds are subject to the same resale restrictions as private placement of securities funds. Specifically, investors are only permitted to dispose of the funds by (a) redemption by the offshore fund, (b) transfer to a Professional Institutional Investor, or (c) transfer by operation of law (e.g. inheritance).

Tax and Litigation Agents

Under the non-securities funds safe harbour, where a SITE/SICE is the Onshore Non-Securities Fund Private Placement Agent, the Manager is required to appoint a local tax agent and litigation agent, however, the SITE/SICE appointed as a placement agent is permitted to act as a tax agent and/or litigation agent for the Manager. Where the funds are sold through a bank or a securities firm, it is not clear in the regulations whether there is also a requirement to appoint a tax or litigation agent.

Disclosure of Information to Prospective Investors

None. However, prudence would suggest a level of disclosure similar to that requirement for private placement of securities funds (see above).

Marketing

There must not be any general advertisement or public solicitation in respect of the fund. Any advertisements or solicitations made to non-qualified offerees are considered public offerings.

Distribution of marketing materials is permitted if they are specifically distributed to the qualified offerees. However, all marketing materials provided to the qualified offerees must include information that a purchaser of units / shares in the fund is restricted from transferring such units / shares to Taiwan persons. Unsolicited phone calls, otherwise known as cold calls, specifically targeted at qualified offerees with the intent to induce or attempting to induce them into investing in the funds are permitted, while cold calls made to non-qualified offerees are not. Any violation of this provision will result in the private placement being deemed as a public offering and would be a criminal offence according to Article 107 of the SITC Law.

Filings

Filings must be made with SITCA by the Onshore Non-Securities Fund Private Placement Agent.

The First Filing

The first filing must be made within five (5) days after receiving payment of the first Taiwan subscription in the fund with a copy to the Central Bank of the R.O.C. (Taiwan) ("Central Bank"). The following documents must be submitted to SITCA:

- A portfolio allocation and Taiwan investor informational chart in prescribed form; and
- A copy of the approval letter issued by the CBC to the relevant Non-Securities Fund Placement Agent regarding relevant foreign exchange activities.

Monthly Reporting

After the first time reporting, a monthly report (including a portfolio allocation and Taiwan investor information chart) must be submitted to the SITCA by the 10th business day of the month following the relevant month, regardless of whether or not there are additional sales or redemptions during the relevant month.

Fees

Same as for private placement of securities funds.

Offering Documents

The Onshore Non-Securities Private Placement Agent is required to provide the investor with a copy of the relevant offering document and an Investor Information Summary in prescribed form.

Other Documentation

A document should be obtained acknowledging that the investors are aware of the resale restrictions.

Offshore Units

Offshore banking units of Taiwan banks, including Taiwan branches of foreign banks ("OBUs"), offshore securities units of Taiwan securities houses, including Taiwan branches of foreign securities firms ("OSUs"), and offshore insurance units of Taiwan insurance companies, including Taiwan branches of foreign insurance companies ("OIUs") are permitted to purchase unregistered offshore funds on behalf of their non-resident clients (including non-resident clients owned by Taiwan resident high net worth individuals).

OBUs are licensed banking units, OSUs are licensed securities units and OIUs are licensed insurance units which are located in Taiwan but deal virtually exclusively with non-resident clients and are treated as being offshore for tax and regulatory purposes.

Under Taiwan regulations, an OBU, OSU or OIU is permitted, via its trust, brokerage or insurance service to intermediate the sale of all types of foreign funds and other financial products to its non-resident customers without registration, reporting or other regulations.

When dealing with Non-Taiwan entities owned and controlled by Taiwan residents, OBU, OSU and OIU are permitted to communicate and deal with the Taiwan resident control party of exist offshore entities but are not permitted to assist to such resident to establish non Taiwan entities.

CONTACT US

Our Offices

Dublin
33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands
Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

New York
245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4168
Fax: +1 212 792 4167

Tokyo
12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

website: www.dilloneustace.com

Contact Points

If you have any queries or would like further information relating to the above matters, please contact us at any of our offices listed above or through your usual contact in Dillon Eustace

Brian Dillon

e-mail brian.dillon@dilloneustace.ie
Tel : +353 1 673 1713
Fax: +353 1 667 0042

Foreign Registrations Team

Brian Kelliher

Michael Tansley

John Kennedy

e-mail fundregistrations@dilloneustace.ie
Tel : +353 1 6670022
Fax: +353 1 667 0042

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO