

A Guide to
Selling
Regulated
Investment
Funds in Latin
America

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Table of Contents

	Page
INTRODUCTION.....	2
ARGENTINA	5
BRAZIL	11
CHILE	17
COLOMBIA	26
MEXICO	30
PERU.....	34
VENEZUELA	40

INTRODUCTION

Ireland is a major hub for cross-border distribution for both UCITS and non-UCITS. International fund promoters from over 50 countries use Irish funds to access European and global markets.

Ireland offers a wide variety of fund vehicles including investment companies, unit trusts, CCFs, ICAVs and limited partnerships, 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. The UCITS and AIFMD regulatory regimes offer passported marketing through the EEA. The UCITS brand is globally recognised and facilitates the sale of Irish funds in over 90 countries worldwide.

The continued growth in the funds industry in Ireland is helped by a competitive environment in which a 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 Euronext Dublin, to adapt and develop regulations to keep pace with developments in the funds industry internationally assists this growth.

SOURCE: Central Bank of Ireland, Montney Insight Ireland Survey 2018 and Irish Funds (Net assets and number of funds valid as of December 2018)



As of December 2019, the total number of Irish domiciled funds (including sub-funds) reached 7,707 with total net assets of €3,048 billion (Source: Irish Funds). Of this total number of Irish domiciled funds and total net assets, UCITS funds accounted for 4,702 of the total with total net assets of €2,316 billion and AIF's accounted for 3,005 of the total with total net assets of €733 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 and Irish Funds). As of December 2019 the value of non-domiciled funds serviced from Ireland amounted to an additional US\$3,864 billion 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. We act for over 1100 Irish investment funds and 130 asset managers. We represent the largest number of Irish domiciled funds (Monterey 2014-2019, Lipper 2009-2014) as well as representing funds domiciled in the Cayman Islands. Dillon Eustace have to date established approximately 25% of all Irish regulated funds, 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 asset management 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. Dillon Eustace has established a dedicated Fund Registration 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 explored the various requirements for marketing a regulated Irish fund in Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela whether as a public offering or on a private placement basis.

****We would like to acknowledge the law firms in each of Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela which have provided the local guidance and 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 firm.***

Please refer to the Dillon Eustace website for further publications which may be of interest. <http://www.dilloneustace.com/Publications>.

DISCLAIMER:

This document is for information purposes 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 this publication, specific legal advice should be sought in advance from local legal advisors who can be contacted through us.

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

If you have any queries or would like further information relating to any of the above matters, please refer to the contacts set out at the end of the document or your usual contact in Dillon Eustace

Date: October, 2020

ARGENTINA

ESTUDIO BECCAR VERLA, BUENOS AIRES, ARGENTINA

Is it possible for Irish UCITS product be sold in Argentina?

Yes, Irish UCITS products can be sold in Argentina through a public or private placement.

Public placements representing offerings of products to unrestricted addressees fall within the scope of a public offering, which is a regulated activity in Argentina, and requires registration with the Argentine Securities and Exchange Commission (“CNV”) and with the General Inspection of Corporations.

Under the Argentine regime, securities must be publicly offered or privately placed, bearing in mind that while public offering is minutely regulated by law, **private placement is not**. Unlike other securities legislation that provide for private offerings exemptions and limited offerings exemptions (for example Regulation D, Rule 144A), Argentine securities regulations do not provide for registration exemptions or “safe harbors”.

Is it possible to privately place the UCITS without the requirements for local registration?

Yes. Within the Argentine regime, only public offering is defined, thus, the scope of private placements must be determined by way of exclusion. However, the legal definition of public offering is overly broad, and there is insufficient case law to draw a distinct line between public and private placements. Therefore, special care should be taken when attempting the latter to avoid triggering public offering regulations and, consequently, registration with the competent authorities. Private placements do not trigger registration requirements.

In connection with this, it is important to emphasize that the most relevant characteristic of a public offering is the solicitation of “*the general public*”. It should be noted that **Argentine Law does not make any distinction between categories of investors**, neither for public nor for private placements, the **number** of people actually reached being important.

The only investor category that is actually relevant under Argentine securities law applies to listed securities, where certain investors (insurance companies, pension funds, and a few others) are only allowed to purchase them if the securities reach a certain minimum rating granted by a renowned rating company.

Therefore, the following guidelines should be followed to prevent the Argentine authorities from considering a placement as a public offering:

- (i) Limit the number of investors contacted simultaneously. There are no provisions under Argentine Law that determine a maximum number of potential investors that may be simultaneously approached without falling within the scope of a public offering. The marketing prohibition may be avoided provided the offer is made to:
 - a restricted number of potential investors simultaneously (there is no official number); and
 - an unlimited number of potential investors, provided the communication is made on a one-to-one basis.

The above tolerations can be combined;

- (ii) Prefer physical delivery of marketing material and only material with generic information is distributed while onshore (i.e. during fly-ins);
- (iii) Avoid advertisements;
- (iv) Preferably limit the market/sale communications to pre-existing clients;
- (v) Preferably use accounts held outside Argentina; and
- (vi) Store evidence of every activity that could aid in demonstrating that what took place was a private placement and not a public offering.

 **Are there exemptions for reverse solicitation or other exemptions?**

No. In Argentina reverse solicitation is recognized in the sense that it would not constitute an offer and therefore would not lead to having to apply private placement guidelines nor even less trigger public offer rules that require registration.

However, the reverse solicitation must be properly documented in case of an audit by the Argentine Securities and Exchange Commission, so that there is enough evidence that the investment occurred as a result of the client having reached out to the manager on an unsolicited basis. This would include keeping copies of the relevant e-mail correspondence with the client.

▣ **What are the requirements for a public offer of an Irish UCITS in Argentina?**

Irish UCITS products can be offered through registered public offerings in Argentina. **In practice it is highly unlikely that a fund can be registered with the local regulator because of the difficulty in satisfying the registration requirements.**

According to the CNV's General Resolution 622/2013, Title II, Chapter V ("Resolution 622"), a company organized in a jurisdiction outside of the Republic of Argentina whose purpose is to solicit funds or other assets from the public for portfolio investments must:

- (i) Establish a branch pursuant to Section 118 of the Argentine Business Associations' Law (the "BAL") at the Argentine General Inspection of Corporations and set a domicile in Argentina;
- (ii) Specify whether it offers its securities in foreign markets and particularly indicate any initial and periodical reporting requirements the company must observe in such jurisdiction/s;
- (iii) Offer securities to the public in Argentina under the same conditions and requirements applying to Argentine issuers. Please note that prior to the authorization to publicly offer securities in Argentina, there is a filing that has to be done with the CNV upon which the issuer is accepted into the so-called "Public Offering Regime";
- (iv) File a prospectus with a supplement providing additional information not specified in the prospectus, such as, local regulatory requirements as well as local risk factors;
- (v) File the annual and quarterly financial statements (translated and legalized). If the fund does not prepare quarterly financial statements, the CNV could authorize the fund to replace such requirement by filing the semi-annual financial statements. Further, reconciliation with Argentine Accounting Rules would be required unless an exemption is obtained from the CNV. Note that exemptions would be granted only for quarterly financial statements and would require appropriate warnings (i.e. legends) for investors;
- (vi) If the purpose of the fund is to invest the proceeds from the sale of the shares in a credit portfolio, then additional requirements would apply to the fund;
- (vii) In the event that the shares are listed on a local stock exchange, additional requirements may need to be met.

On Ongoing requirements:

The issuing fund (or its advisers) will be required by the CNV to comply with certain continuing obligations as a result of a public offer of shares in the fund and must submit to the same reporting system as local issuers of securities.

Financial statements must be presented quarterly and annually to the CNV. These must be filed according to the standards established by the International Financial Reporting Standard (“IFRS”). Financial institutions are exempt of complying with these standards.

Furthermore, the CNV holds as a principle the “Asymmetry of Information”, which implies that the same information provided to the authorities in other jurisdictions should be filed with the CNV in order to ensure local investors are subject to the same conditions.

In addition, the fund shall report the following:

- a) Each redemption date or date to exercise a redemption option;
 - 1) the redemption price of such securities;
 - 2) the list of any funds obtained in Argentina and their related investment; and
 - 3) the resulting portfolio formation.

Such report must be executed by a duly authorized representative and submitted to the CNV.

Other on-going information requirements apply to closed-ended funds and certain other specialized funds – please contact counsel for further information regarding how recent regulations have impacted on these types of funds.

- b) On the last day of each month, a summary of any funds obtained in Argentina, and any investments during the period, with a detailed description of the portfolio assets, executed by a duly authorized representative.

The report must be submitted to the CNV within the first five (5) days of the next month following each monthly period, and published, at the fund’s option, in the information gazette of a stock exchange or securities market or in a major newspaper in the jurisdiction related to the domicile selected pursuant to Section 118 of the BAL.

- c) The fund must comply with any duties and restrictions prescribed in Resolution 622 regarding “Transparency in the Public Offering System”, such as to report any relevant information that could affect the underwriting of securities or their negotiation.

▣ **A brief explanation of the registration process**

The process for registration, following the requirements set out above, takes place with the CNV, which in turn requires pre-existing registrations with the Argentine General Inspection of Corporations for its Corporate Registration and the Argentine Federal Tax Authority (the “AFIP”) for its Tax Registration. Also, keep in mind that to be registered with the above-mentioned authorities the issuers must file the relevant affidavits regarding compliance with the Argentine Anti-Money Laundering and Counter Terrorist Financing Law.

Once the issuer request is accepted it would enter into the so-called CNV’s “Public Offering Regime” and therefore would need to file a prospectus with its appropriate local supplement for each time it would like to make a public offering of its shares, securities, etc.

Additional registration processes may be necessary if the shares/securities are to be listed on stock exchange markets.

▣ **Documentation requirements for registration / country supplement requirement**

All documentation issued abroad to be filed with the CNV must be certified by a country clerk or notary public, and either legalized at the nearest Argentine Consulate or apostilled. Additionally, documents not in Spanish must be translated into such language by a locally qualified translator.

▣ **Local Agent requirements**

If an Irish UCITS wishes to obtain CNV authorization to act as Locally Authorized Agent itself, it must be registered with the General Inspection of Corporations, which requirements are extensive.

Conversely, an Irish UCITS may enter into an agreement with a Locally Authorized Agent to perform marketing activities through the Locally Authorized Agent in Argentina. Both parties must: (i) be locally licensed with their respective competent authority; (ii) enter into a written agreement for the Locally Authorized Agent to act on the UCITS behalf; and (iii) file the agreement with the CNV.

Please note that these incorporation requirements apply to those who perform regular activities within the country, **be it the Marketing Entity, its sales agent, or both.**

▣ **Local Distributor requirements**

Same as Local Agent Requirements.

▣ **Estimated timeline until marketing is permitted?**

From our experience, the estimated time to obtain the CNV authorization for public offerings and the corresponding stock exchange authorization to list (if relevant) ranges approximately from two to three months as from the filing of all the necessary paperwork. The estimated time could be subject to change pursuant to the future regulation of CNV.

You should also consider that an additional two to three months' period (counted as from all paperwork being in) would be required to establish a representative office pursuant to Section 118 of the BAL. Please note that having the representative office in place and approved by the General Inspection of Corporations is a pre-requisite for filing with the CNV.

The above-mentioned terms are the regular ones, yet the overall term will depend on the efficiency of obtaining and processing the paperwork. This will actually depend on the client.

▣ **Estimated costs (regulatory initial and annual)?**

The auditing and control fees charged to issuers of securities goes from USD \$3,000 to USD \$4,000 annually.

This fee would go up to an annual fee of 0,02% of the assets managed in case of mutual funds administrator agents.

The authorization fees charged to issuers of securities are approximately 0.05% of the total amount to be issued/offered.

▣ **Estimated costs (local counsel for assisting with registration)**

A rough estimation of the aggregate legal fees related to a full registration (with the CNV, Stock Exchange, Tax Authorities and General Inspection of Corporations), assuming the absence of significant objections from the regulators, would range from USD 40,000 to USD 80,000, these amounts could be subject to change pursuant to future regulations of the CNV.

BRAZIL

LEVY & SALOMÃO ADVOGADOS, SÃO PAULO, BRAZIL

Is it possible for Irish UCITS product to be sold in Brazil?

UCITS investment funds may be sold in Brazil by way of private placement¹.

Public offerings of shares issued by UCITS investment funds within the Brazilian territory are not permitted.

As per Article 2 of Law No. 6,385, of December 7, 1976, interests in and shares of offshore funds are considered securities under Brazilian law. As such, public offering of shares issued by UCITS investment funds within the Brazilian territory is subject to the rules of public offerings of securities.

Such rules determine that two cumulative layers of registration are required in order that securities be publicly marketed in Brazil:

- (i) the offer procedure must be registered with the Brazilian Securities Commission (*Comissão de Valores Mobiliários – CVM*) (Article 19 of Law No. 6,385/76; and Article 2 of CVM Rule No. 400, of December 29, 2013); and
- (ii) the issuer of the securities itself must obtain its registration with the CVM (Article 21 of Law No. 6,385/76).

The current Brazilian regulation only foresees the registration with the CVM of foreign issuers for the purpose of negotiating Brazilian Depositary Receipts – BDRs (CVM Rule No. 480, of December 7, 2009)².

Therefore, obtaining the necessary registrations before the CVM for the public offering of foreign securities such as interests issued by UCITS funds within the Brazilian territory is currently not possible and, thus, in practical terms, their public placement in Brazil is banned.

The alternative to properly access the public in general is the incorporation of a Brazilian investment fund with the purpose of investing abroad, in accordance with the terms of CVM Rule No. 555, of December 17, 2014 (“Brazilian Feeder Fund”).

¹ Please refer to our comments below regarding the Brazilian concept of public offering of securities and the private placements of securities in Brazil.

² BDRs are certificates issued by a depositary institution in Brazil that represent securities of corporations or similar corporate structures with headquarters abroad.

Once registered with the CVM, this Brazilian Feeder Fund could have its shares publicly offered within Brazil and, as a result, Brazilian investors would be indirectly investing in foreign securities.

The investment in foreign securities by a Brazilian Feeder Fund is subject to CVM Rule No. 555/14, which imposes compliance with certain requisites regarding the relevant offshore investment, such as proof of the existence of the shares/interests issued by the offshore fund to be subscribed by the Brazilian fund; and the suitability of the foreign fund's service providers. The requisites are fewer where the Brazilian fund is to be offered only to professional investors³, and more extensive if the offer is directed to qualified investors⁴ or to investors in general that do not qualify as professional investors.

□ Is it possible to privately place the UCITS without the requirements for local registration?

Yes. Private placements of securities are not subject to the registration obligations described above.

However, private placements are limited due to the broad concept attributed to public offering in Brazil, which encompasses, for example, sales efforts performed by anyone other than the issuer (such as managers, placement agents, employees or agents of the offshore fund), even if directed at only a few investors.

According to Article 19, 3rd paragraph, of Law No. 6,385/76 and Article 3 of the CVM Rule No. 400/03, the concept of public offering encompasses the placing or offer of placement of investments to the public through any of the following:

- i) use of lists, bulletins, offering memoranda, prospectuses or similar material destined to the public;
- ii) search of indeterminate subscribers or purchasers, even if attempted through standard communications directed to individually identified addressees, through employees, representatives, agents or any legal entities or individual, whether they take part in the securities distribution system or not, or, if in noncompliance with the provisions of CVM Rule No. 400/03, the consultation on the feasibility of the offer or the collection of an investment commitment with undetermined subscribers or purchasers;

³ Professional investors are those that either: (i) hold financial investments in an amount higher than R\$ 10 million, or are (ii) financial institutions or other institutions authorized to operate by the Central Bank of Brazil, (iii) insurance companies and capitalization companies, (iv) pension funds, (v) investment funds, (vi) investment clubs managed by a CVM-authorized portfolio managers, (vii) independent investment agents, portfolio managers, securities advisors or analysts (investing their own resources), or (viii) non-resident investors.

⁴ Qualified investors are those that either: (i) hold financial investments in an amount higher than R\$ 1 million, or are (ii) professional investors, (iii) natural persons registered as independent investment agents, portfolio managers, securities advisors or analysts (investing their own resources), or (iv) investment clubs managed by a qualified investor shareholder.

- iii) negotiation directed at indeterminate subscribers or purchasers in premises or offices open to the public; or
- iv) the use of oral or written publicity, letters, advertisements or notifications, especially if made through public or electronic means of communication (the latter being internet pages, similar social nets or e-mail), and any form of communication directed to the general public with the objective of promoting the subscription or disposal of securities, directly or through third parties acting on behalf of the issuer.

The requirements of a public offering do not apply if the offer is not made to the general public. However, in Brazil, the concept of “general public” is so wide it encompasses any class, category or group of persons, whether or not linked by an individualizing trait. Therefore the only exception to the general public concept refers to persons who have a previous, close and habitual commercial, credit, corporate or labor relationship with the issuer (the UCITS fund, in the present case) (Article 3, 1st paragraph of CVM Rule No. 400/03).

▣ Are there exemptions for reverse solicitation or other exemptions?

Yes, reverse solicitations are not subject to the registration obligations described above.

Regardless of the absence of a legal definition, a reverse solicitation will occur whenever an investor has the initiative to request information about a product/fund without any previous solicitation.

It is important to follow a clearly defined procedure to ensure that no public offering is undertaken. For instance, providing specific information about a fund/product only in a subsequent meeting, phone conversation or email requested/sent by the investor could be an evidence that it was the investor who took the initiative to request specific information about a fund/product.

In addition, in Brazil there is no safe harbor rule establishing a maximum number of investors to whom securities may be offered without characterizing a public offering. There is also no qualified investor type exemption.

▣ What are the requirements for a public offer of an Irish UCITS in Brazil?

As explained above, public offerings of Irish UCITS funds within the Brazilian territory are not permitted. The alternative to properly access the public in general is the incorporation of a Brazilian Feeder Fund dedicated to investing into Irish UCITS fund(s).

▣ A brief explanation of the registration process for Brazilian Feeder Funds

For registration of Brazilian Feeder Funds, a series of documents and information shall be presented to CVM. The most important ones are the following: (i) the fund’s by-laws

("regulamento"), (ii) name of the fund's audit firm, (iii) fund's registration number before the Brazilian Federal Revenue, and (iv) statement from the fund's administrator that the following service providers have been engaged, among others: (a) portfolio manager, (b) investment advisor, (c) placement agent, (d) custodian, (e) rating agency.

In addition to that, registration with CVM of the public offer of the shares of the Brazilian Feeder Fund may also be required. Open ended fund shares may be distributed in the market without a distribution registration, while the distribution of closed ended fund shares depends on the previous registration with the CVM. In both cases, the offering of shares must be performed through an institution that is a member of the Brazilian distribution system, such as a bank or a securities broker.

There are three different processes for the public offer of shares issued by closed ended Brazilian Feeder Funds: (i) offers to the general public, (ii) offers to qualified investors and (iii) restricted offers to professional investors:

Offers to the general public follow the regime of CVM Rule No. 400/03, applicable to public offerings of securities in general.

The main documents required for the registration process are: (i) draft version of the Preliminary or Definitive Prospectus, or a final version of the Definitive Prospectus, (ii) distribution agreement and (iii) draft version of subscription bulletin or acquisition receipt.

Offers to qualified investors follow the regime of CVM Rule No. 555/14, specific for this kind of investment fund.

Offers of shares for qualified investors are automatically authorized by CVM with the remittance of the following documents/information: (i) advertising material, (ii) information on the minimum and maximum number of shares to be offered, the issuance total value and other relevant information pertaining to the offer, (iii) information on the beginning and termination dates of the offer, and (iv) statement by the administrator of the fund that a distribution agreement has been entered into with an intermediary.

Offers to professional investors follow the regime of CVM Rule No. 476, of January 16, 2009.

The registration of the offer is automatically waived, whilst the lead intermediary of the offer must deliver certain pieces of information to the CVM. No more than 75 investors may be contacted and no more than 50 investors may acquire shares.

Documentation requirements for registration / country supplement requirement

Please refer to our comments above with respect to the registration of (i) the Brazilian Feeder Fund and (ii) the public offer of shares issued by the Brazilian Feeder Fund.

As the public offer of shares issued by the Irish UCITs fund is not permitted in Brazil, there is no country requirement in the Brazilian regulation.

Local Agent requirements

The Irish UCITS does not need to have a local agent in Brazil. However, the investment in foreign securities by a Brazilian Feeder Fund is subject to the compliance with certain requisites regarding the relevant offshore investment, including the suitability of the foreign fund's service providers.

The Brazilian Feeder Fund must have a local (i) administrator, (ii) investment manager, (iii) custodian and (iv) placement agent. These must be authorized by the CVM.

Local Distributor requirements

Only institutions that are part of the Brazilian securities distribution system and duly registered with the CVM are authorized to intermediate public offerings of securities in Brazil (Articles 15 and 16 of Law No. 6,385/76).

Estimated timeline until marketing is permitted

The type of the Brazilian Feeder Fund (open ended or closed ended fund), and of the offer to be performed may have an impact on the registration timing, but in general terms it is reasonable to estimate that it takes between 30 to 60 days to have an investment fund registered before CVM and ready to be marketed.

Estimated costs (regulatory initial and annual)

The regulatory initial fee to register a public offer of shares of Brazilian Feeder Funds is equivalent to 0.64% of the total value of the offer (with a minimum of R\$809.60 and a cap of R\$317,314.36).

This fee is not applicable to public offers performed under the regime of CVM Rule No. 476/09 since such offers are not subject to registration with the CVM.

In addition to the public offer fee, there is also the quarterly supervisory fee described below, which is proportional to the net equity value of the fund:

Net equity value (R\$)	Quarterly supervisory fee (R\$)
Until 5,031,489.20	939.81
Between 5,031.489.21 and 10,062,978.40	1,409.71
Between 10,062.978.41 and 20,125,956.80	2,114.57
Between 20,125,956.81 and 40,251,913.60	2,819.43

Net equity value (R\$)	Quarterly supervisory fee (R\$)
Between 40,251,913.61 and 80,503,827.20	3,759.23
Between 80,503,827.21 and 161,007,654.40	6,014.78
Between 161,007,654.41 and 322,015,308.80	9,022.16
Between 322,015,308.81 and 644,030,617.60	12,029.55
Between 644,030,617.61 and 1,288,061,215.20	15,036.94
Above 1,288,061,235.21	16,916.56

 **Estimated costs (local counsel for assisting with registration)**

Local counsel's costs vary significantly depending on several aspects, including the characteristics of the Brazilian Feeder Fund and of the UCITS investment fund(s) to be invested, the service providers involved and the type of public offer to be performed. Therefore, a fee proposal shall be obtained on a case-by-case basis.

 CHILE**ALESSANDRI ABOGADOS, SANTIAGO, CHILE** **Is it possible for Irish UCITS product to be sold in Chile?**

Yes. Irish UCITS products can be sold in Chile.

 **Is it possible to privately place the UCITS without the requirements for local registration?**

Yes. It is possible to privately place the UCITS without the requirements for local registration as a private placement according with the NCG 336 issued by the Chilean securities regulator. However, if the UCITS is to be sold to a Chilean pension fund or insurance company, then normally approval would be required from the Comisión Clasificadora de Riesgo (“CCR”). The CCR is not the securities regulator, but a special agency created by the pension fund statute whose remit is to determine if a particular security is eligible or not for the so called General Investment Category of Chilean pension funds. Thus, in the case of pension funds and insurance companies, even if the shares are offered under the private placement regime, CCR approval will still be required.

As to the **private placement regime**, on June 27, 2012, the Chilean securities regulator, the *Comisión para el Mercado Financiero de Chile* (“CMF”), issued *Norma de Carácter General N°336* (“NCG 336”), which provides a potential safe harbor from registration by outlining when an offer of securities does not constitute a public offer. The rule applies to all types of securities, as defined in the Chilean Securities Market Law No. 18.045, including shares of a Fund.

Pursuant to NCG 336, an offer of securities shall not constitute a public offer provided that all of the following conditions are met:

- i. the person making the offer complies with the disclosure requirements and adopts compliance procedures established in NCG 336;
- ii. the offer is not made through mass media; and
- iii. at least one of the following conditions occurs:
 - a. the offer is only directed to certain “Qualified Investors” that correspond to a certain special category, such as Institutional Investors (as defined in the securities statute) and which are referred to as “Specially Qualified Investors”. If the offer is directed to Specially Qualified Investors, it can be made to an unlimited number of them;

- b. the offer is directed to no more than 250 investors which are Regular Qualified Investors, through one or more offers in a period of 12 months since the first offer is made (note that it is also possible to include up to 50 investors which are not Qualified Investors in this number). Therefore, the offer can be made to 200 Regular Qualified Investors, plus 50 non-Qualified Investors, or the offer can be made to an unlimited number of Specially Qualified Investors, plus 250 Regular Qualified Investors; or
- c. the offer has a unit value that is at least equivalent to UF 5,000 (approx US \$170,000), in which case the offer may be made to any number of investors, whether or not the investors are Qualified Investors.

Chilean legislation does not define “investment advice” thus in determining whether an “offer” has taken place for the purpose of the quantitative limit mentioned above, the CMF evaluates the circumstances of investment advice provided on a case by case basis. For example, the CMF may consider the connection between the person making the offer and the issuer. If the advice is made by a stockbroker or dealer to its customer who solicits said advice, then the advice shall not constitute an offer. However, if a stockbroker or dealer provides investment advice to a customer about a specific security belonging to an intermediary, that would qualify as an offer. Further, if the intermediary receives a commission or fee from the fund for the investment advice, it would also qualify as an offer. And, finally, if the intermediary is the distributor of the offshore fund, its investment advice would necessarily qualify as an offer.

NCG 336 defines “mass media” as “the press, radio, television and internet, when those media are for public access to or from Chile, regardless of the place where they are produced or released, as well as other forms of communication that are similar in nature and scope.” Under NCG 336, types of communications that shall not be considered mass media include: (i) letters, e-mails and other communications (physical or electronic), that are directed exclusively to a particular person and who is duly individualized in the same communication, and (ii) telephone calls, meetings, interviews and electronic systems with limited access. Please note that “electronic systems with limited access” should generally be understood as password protected websites, which would not fall under the definition of mass media.

Norma de Carácter General N°216 (“[NCG 216](#)”) lists the persons that qualify as “Specially Qualified Investors” and “Regular Qualified Investors”.

“[Specially Qualified Investors](#)” include the following:

- 1. institutional investors (Chile commercial banks, Chile registered loan institutions, Chile insurance companies, Chile reinsurance entities, Chile

registered fund and portfolio managers and Chile pension fund managers (AFPs), and certain other entities listed in General Rule No. 410 –

- (i) Chilean private investment funds regulated under the Chile investment funds statute (Law 20.712) that during 12 of the last 18 months either (a) have had at least four unrelated investors, each of which with 10% or greater participation in the fund; or (b) have had as an investor either one or more funds supervised by the CMF, an insurance company or a bank whose total participation has been equal to or greater than 50% of the fund;
 - (ii) entities that are registered in the CMF portfolio managers register provided the manager manages: (a) assets of at least UF 500,000 (US\$ 17m) in at least 50 unrelated portfolios or (b) one or more portfolios with assets of at least UF 1m (approximately US\$ 34m));
 - (iii) governmental or state institutions and sovereign funds that are authorized to invest in capital markets);
2. foreign regulated entities such as banks, insurance and reinsurance companies, fund managers and securities intermediaries incorporated abroad (in the case of foreign securities brokers, provided they either act for their own account or they do not act for citizens of Chile, residents of Chile nor persons in transit in Chile);
 3. Chilean stock brokers and securities agents when they act for their own account;
 4. Chilean stock brokers of the agricultural commodities exchange acting for their own account (provided the investment is made in certain products as specified in the CMF rules);
 5. local or foreign individuals or entities which at the time of investing have financial investments in registered securities (local or foreign public offer securities) in an amount not less than 10,000 UF (approximately US\$ 345,000); and
 6. local or foreign individuals or entities that have delegated their investment decisions to a Specially Qualified Investor by means of a discretionary account agreement that specifically authorizes investment in unregistered securities and includes certain other minimum provisions.

“Regular Qualified Investors” include the following:

1. local or foreign entities that have delegated their investment decisions to a Specially Qualified Investor; and
2. local or foreign individuals or entities who at the time of investing have UF 2,000 (approx US\$ 70,000) in local or foreign public offer securities and also fulfill one of the following requirements:
 - a. have assets equal to or above UF100,000 (approx US\$ 3,500,000);
 - b. have closed transactions in the stock market for an individual minimum amount of UF 1,000 (approximately US\$ 34,500), with a minimum frequency of 20 quarterly transactions, during the previous 4 quarters; or
 - c. have the necessary knowledge to understand the risks involved in investing in the relevant markets and securities.

With respect to item 2 above, NCG 216 establishes that the local or foreign individuals or entities shall only be considered as Qualified Investors if their transactions are made through Chilean registered stock brokers, securities dealers and fund managers (*i.e.*, securities intermediaries and fund managers registered with the CMF) and provided further that certain additional requirements are met.

Shares of a Fund sold on a private placement basis must comply with the disclosure requirements established in NCG 336. According to Section III of the CMF general rule titled “Disclosure Obligations”, any communication and/or physical or electronic material used to offer the securities to potential investors must include, in a highlighted form and in Spanish, the following information:

1. The commencement date of the offer and the fact that the relevant offer is made pursuant to this CMF Rule 336;
2. That the offer deals with securities that are not registered in the Securities Registry (*Registro de Valores*) or in the Foreign Securities Registry (*Registro de Valores Extranjeros*) kept by the CMF, which are, therefore, not subject to the supervision of the CMF;
3. That, given that the securities are not registered, there is no obligation for the issuer to disclose in Chile public information about said securities; and

4. That the securities may not be publicly offered as long as they are not registered in the corresponding Securities Registry.

The legend should include the wording established in the NCG 336, with minor amendments in order to make the disclaimer applicable to the particular case.

Date of the offer: [place here the date of commencement of the offer, which can be the date of the prospectus]:

- (i) This offer is made pursuant to Rule 336 issued by the Comisión para el Mercado Financiero of Chile (CMF);*
- (ii) This offer deals with securities that are not registered in the Securities Registry nor in the Foreign Securities Registry kept by the CMF, and that are, therefore, not subject to the supervision of the CMF;*
- (iii) Given that the securities are not registered, there is no obligation for the issuer to disclose in Chile public information about said securities; and*
- (iv) The securities may not be publicly offered as long as they are not registered in the corresponding Securities Registry.*


In Spanish:

Fecha de inicio de la oferta: [date of commencement of the offer]:

- (i) La presente oferta se acoge a la Norma de Carácter General N° 336 de la Comisión para el Mercado Financiero (CMF) de Chile;*
- (ii) La presente oferta versa sobre valores no inscritos en el Registro de Valores o en el Registro de Valores Extranjeros que lleva la Comisión para el Mercado Financiero, por lo que los valores sobre los cuales ésta versa, no están sujetos a su fiscalización;*
- (iii) Que por tratarse de valores no inscritos, no existe la obligación por parte del emisor de entregar en Chile información pública respecto de estos valores; y*
- (iv) Estos valores no podrán ser objeto de oferta pública mientras no sean inscritos en el Registro de Valores correspondiente.*

 **Are there exemptions for reverse solicitation or other exemptions?**

Please note that a reverse solicitation does not qualify as “marketing/distribution” in Chile. However, the reverse solicitation must be genuine one and duly documented. There are no other exemptions.

 **What are the requirements for a public offer of an Irish UCITS in Chile?**

In Chile an offer of foreign securities is governed by the Securities Market Law, No. 18,045. The law applies to all types of securities. Said law defines securities as “any

transferable titles, including shares, options for the purchase and sale of shares, bonds, debentures, shares of mutual funds, savings plans, negotiable instruments and, in general, every credit or investment title”.

If Irish UCITS are to be offered in Chile through active marketing/distribution, such products must be registered with the Chilean securities regulator according to the Market Securities Law, No. 18,045 and NCG 352. These provide for the registration of foreign securities, such as foreign fund shares in the Foreign Securities Register kept by the CMF.

NCG 352 specifies which documentation is required by the regulator to register foreign securities for public offering. That documentation will be the information that will be available for the public, for any kind of investor.

The information and documents to be filed are the following:

1. Power of attorney appointing a representative that is a resident of Chile as process agent. The power of attorney must be subsequently notarized and apostilled.
2. Prospectus and such documentation of similar nature which describe the conditions and characteristics of the securities (KIID, protocols, etc) provided they were filed abroad. That information must be equivalent to that filed with the issuer's regulator. The language of the prospectus may be either Spanish or English.
3. Please note that according to NCG 352, all documentation may be filed by informing the exact URL where the document can be found, so long as the informed URL corresponds to, for example, the website of the issuer/Fund for the registration of the foreign security, provided further that the information uploaded is equivalent to that filed with the issuer's home state regulator.
4. Sworn statement by the issuer's representative in Chile certifying that all information filed with the CMF is equivalent to that provided by the issuer abroad and that the information supplied in the application for registration is true and accurate.
5. The issuer must demonstrate it is a supervised entity. To that purpose, it would suffice to provide the URL of the regulator/exchange webpage stating that the issuer or its securities are registered therein.
6. Copy of the audited financial statements of the fund, alongside the annual report and the auditor's report corresponding to the last financial year. Please

note that if the financial statements are not prepared according to the IFRS, or audited according to the IAS, this must be disclosed.

7. Summary of the material events that the issuer had to report to its regulator during the past year that occurred to the Fund, its investments, investment manager, its shares, and/or in the offering of its shares.
8. Evidence that the home state jurisdiction is not considered by FATF a High-risk and Non-Cooperative jurisdiction. The URL of the websites of FATF would be sufficient evidence.
9. Facsimile copies of information leaflets, flyers or other marketing materials that the fund intends to publish in Chile, must be filed with the CMF before they are available to the public. Furthermore, certain disclaimers must be included (regardless of whether the securities are offered to the general public or qualified investors) so as to duly inform that the CMF is not the fund's primary regulator (i.e. that they are subject to foreign legislation, information supplied is that reported to the issuer's regulator, etc.).

Information requirements post-registration

1. The same information that the issuer must report to its home state regulator relating to the fund or its shares, the investments or the manager, must be reported to the CMF and any stock exchanges on which the fund is listed in Chile, as soon as it is filed abroad. In general all the information filed with the CMF must be kept updated on an ongoing basis. Thus, every relevant fact or relevant information reported as such with the home regulator of the fund or where the shares of the fund are traded, in relation with the fund or its shares, the investments or the manager, must be reported to the CMF and stock exchanges where the fund is listed in Chile.
2. In practice, the information that must be provided to the Chilean regulator is that which in the home state has led to a shareholder notice or otherwise a prospectus supplement.
3. The communication must point out the specific website (URL) where the document can be found and which must correspond to one of the following authorized sites ("Authorized Sites"):
 - website of the home regulator or from the manager of the fund;
 - website of the stock exchange in which the fund is traded;
 - website of the fund; OR
 - website of the sponsor of the fund.

4. Financial Statements

The updated financial statements of the fund must be available to the investors in terms similar to those required by the home state regulator of the fund. It can be published in the website of one of the Authorized Sites.

5. Other information

Every fact or relevant information reported in this manner with the home regulator of the fund or where the shares of the fund are traded, in relation with the fund or its shares, the investments or the manager, must be informed to the Chilean investors.

A brief explanation of the registration process

Please see above.

Documentation requirements for registration / country supplement requirement

Please see above.

Local Agent requirements

Local agent is not required.

Local Distributor requirements

Once the relevant Irish UCITS products (fund shares) are registered in the Foreign Securities Registry kept by the CMF and registered with the relevant stock exchanges in Chile, the said shares may be publicly offered and freely marketed. This means that general advertising may be undertaken by issuer in relation to its shares, which may therefore be offered to any type of investor, whether or not a qualified investor.

Any Chilean investor will be able to invest in such shares either by contacting the funds distributor(s) located outside of Chile directly. However, if the investor wants to use any distributors located in Chile to make the investment, then such distributors must be intermediaries registered with the CMF (i.e. stock brokers, securities dealers or asset management firms).

Estimated timeline until marketing is permitted

The CMF takes approximately three months to review a complete application.

▣ **Estimated costs (regulatory initial and annual)**

The CMF registration fee would amount to approx. US\$ 700 per share class that is registered (with a maximum of approximately US\$ 17,000). Once the CMF issues the certificate of registration, the shares are registered with the relevant stock exchanges in Chile. This registration consists in practice as a mere notification of the information filed with and certificate issued by the CMF. The stock exchanges do not charge any filing or registration fees.

There are no regulatory annual fees that must be paid.

▣ **Estimated costs (local counsel for assisting with registration)**

Estimated legal fees for the preparation, filing and prosecution of one application filed simultaneously for any number of funds would amount to approximately US\$ 6,000.

Estimated annual legal fees for the maintenance of the registration, complying with ongoing filings are US\$ 6,000 per annum considering an average number of filings of prospectus updates, supplements, financials, shareholder notices, excluding fund mergers, fund name changes, management company changes which would require an amendment to the registration.

COLOMBIA

PHILIPPI PRIETOCARRIZOSA FERRERO DU & URÍA, BOGOTÁ, COLOMBIA

Is it possible for Irish UCITS product to be sold in Colombia?

Yes, Colombian residents can invest in foreign securities without any restriction, provided that they comply with foreign exchange regulations. Therefore it is possible for an offshore entity to sell Irish UCITS in Colombia.

In terms of the requirements for a seller of Irish UCITS in Colombia, there are different scenarios as follows:

- i. If the seller is a financial foreign entity (the “Foreign Entity”) (defined in Colombian law as an entity that (i) is established outside of Colombia, including corporations and partnerships; (ii) is under the surveillance of a governmental regulator, pursuant to the laws of the jurisdiction where they provide financial and/or capital market products and services; and (iii) have as its corporate purpose the rendering of financial or capital market products and services), the entity would be required to privately place Irish UCITS through an incorporated authorized presence in Colombia;

This authorized presence may be established in any one of the following three ways: (a) establishing a representative office; (b) entering into a finder agreement (*contrato de corresponsalía*) with a Colombian broker or with a Colombian financial corporation (the “Finder Agreement”); or (c) promoting the business of the Foreign Entity through a financial subsidiary or affiliate duly organized in Colombia;

- ii. if the seller is not a Foreign Entity, the entity may privately place Irish UCITS without an incorporated authorized presence in Colombia;
- iii. If the Irish UCITS are being negotiated in the secondary market, the seller may privately place the securities without an incorporated authorized presence in Colombia.

Is it possible to privately place the UCITS without the requirements for local registration?

The private placement is not an exception to the authorized presence requirement mentioned above. The private placement is an exception for registration requirements in connection with a public offering in Colombia. As a consequence, if the issuer of Irish UCITS is the seller of the same, and such issuer qualifies as a Foreign Entity as

explained above, then such issuer, acting as a seller, must comply with the authorized presence requirements mentioned above.

In terms of the requirements for private placements of Irish UCITS in Colombia, there are different scenarios as follows:

- (i) If the Irish UCITS issuer is a Foreign Entity, the entity would be required to privately place Irish UCITS through an incorporated authorized presence in Colombia.
- (ii) There are no local registration requirements regarding private placement of Irish UCITS in the event that the issuer of such units is a non-financial foreign entity, provided that such offer is being placed up to 99 individual investors.
- (iii) There are no local registration requirements regarding private placement of Irish UCITS when such units are being negotiated in the secondary market.

 **Are there exemptions for reverse solicitation or other exemptions?**

Yes, the regulatory promotion restriction mentioned above does not apply in “reverse solicitation” scenarios, that is, when the Colombian client contacts the Foreign Entity, at its own initiative, and in the absence of any promotion or publicity by the foreign entity. In other words, in the event that a Colombian financial consumer seeks to engage in commercial relations with Foreign Entities on its own initiative (and such relations have not been otherwise sought or initiated by the respective Foreign Entity), the prohibition for engaging Colombian clients or investors will not be applicable. Based on our local legal experience, we do not recommend relying on this exception to avoid having authorized presence, as the Colombian Finance Superintendence would most likely view this as an attempt to circumvent the applicable laws and regulations governing the promotion and marketing of Foreign Financial Services.

 **What are the requirements for a public offer of an Irish UCITS in Colombia?**

Register the issuer and the securities in the National Registry of Securities and Issuers “Registro Nacional de Valores y Emisores”. In the event the offer is intended to take place in the stock market, the registration of the securities in the Colombia Securities Exchange “Bolsa de Valores de Colombia” would also be required.

For any security registered in the National Registry of Securities and Issuers, the public offer may be made through the offers book “libro de ofertas” or book building. By means of which the issuer may carry out marketing activities, preliminary promotion, and reception and registration of demand orders in a book of offers in which

the price of the securities to be issued, the allocation and the size of the issue are determined.

A brief explanation of the registration process

An applicant wishing to obtain authorization for promoting financial and/or capital market products/services must complete a formal process involving the completion of required application forms and the submission of supporting information. In relation to timing, while the law does not set forth limits, in most cases the regulator will take between three and six months from receipt of a completed application in which to determine whether or not to approve the application. In general, the following documents will be required to be filed:

- Certificate issued by the competent authority evidencing the: (i) legal existence; (ii) authorized representatives; and (iii) activities for which the entity is authorized in its own jurisdiction, as well as the initial and expiration dates of authorization (if applicable).
- Articles of incorporation and bylaws.
- Authorization or consent issued by the competent authority or corporate body of the Foreign Entity for the promotion of services through a representative office or by finder agreement.
- Business plan, which must contain a description of the main activities that will be conducted in Colombia, including a description of planned marketing activities.
- Documentation appointing an individual in Colombia as the representative of the office (issued by the corresponding corporate body or authority), together with such individual's CV (containing sufficient evidence enabling determination of such individual's moral character, knowledge and experience in the field).
- Financial statements of the Foreign Entity.
- Foreign Entity's AML Policies.

Documentation requirements for registration / country supplement requirement

Please see above.

Local Agent requirements

As long as the UCITS is privately placed with up to 99 individual investors, there will be no need to hire a local agent (regardless if the issuer is a financial or non-financial foreign entity).

If the UCITS will be placed by means of a public offer, such issuance will require the hiring of a local agent.

▣ **Local Distributor requirements**

As long as the UCITS is privately placed with up to 99 individual investors, there will be no need of hiring a local distributor (regardless the issuer is a financial or non-financial foreign entity).

If the UCITS will be placed by means of a public offer, such issuance will require the hiring of a local distributor.

▣ **Estimated timeline until marketing is permitted**

An estimate of 6 to 8 months in the event that the incorporation of an authorized presence will be needed.

An estimate of 3 months in the event that there is no need to incorporate an authorized presence but the UCITS will be placed through a public offering.

If there is no need to incorporate an authorized presence nor a public offering, such units can be privately placed immediately.

▣ **Estimated costs (regulatory initial and annual)**

The incorporation of an authorized presence (via rep. office or via finder agreement) does not involve any costs in relation with the authorization process to be filed with the Colombian Superintendence of Finance. Notwithstanding, several costs related to translation and apostille of documents may arise during the authorization process.

▣ **Estimated costs (local counsel for assisting with registration)**

The incorporation of an authorized presence will cost approx. USD\$30.000.

The placement of UCITS through a public offering will cost approx. USD\$70.000.

MEXICO

SÁNCHEZ DEVANNY ABOGADOS, MÉXICO

Is it possible for Irish UCITS product to be sold in México?

Yes, UCITS may be offered and sold as listed ETFs. Under Mexican Law, including the Applicable Criteria to Investment Vehicles known as ETFs ("*Criterios Aplicables a los Vehículos de Inversión conocidos como ETFs (Exchange Traded Funds)*"), UCITS may be offered and sold in Mexico as ETFs since they fall within the category of "instruments that replicate stock, debt and real estate indexes". Ireland qualifies as an "Eligible Country for Investments" as defined in Exhibit "P" ("*Anexo P*") of the Mexican General Provisions that Establish the Investment Regime to which Investment Companies specialized in Retirement Funds shall be Subject To ("*Disposiciones de Carácter General que establecen el Régimen de Inversión al que deberán sujetarse las Sociedades de Inversión Especializadas en Fondos para el Retiro*").

Is it possible to privately place the UCITS without the requirements for local registration?

No. Under Mexican Law, more specifically, under the Mexican General Provisions applicable to International Quotation Systems ("*Disposiciones de Carácter General Aplicables a los Sistemas Internacionales de Cotizaciones*"), among other regulations, UCITS may only be publicly offered by means of the International Quotation System ("*Sistema Internacional de Cotizaciones*" or "*SIC*").

Are there exemptions for reverse solicitation or other exemptions?


No, even in case of reverse solicitation, in México, UCITS may only be publicly offered and they have to strictly fulfil with all the applicable requirements of a public offering.

What are the requirements for a public offer of an Irish UCITS in México?

Irish UCITS shall fulfil at least with the following:

- (i) Be registered by the corresponding Irish authority;
- (ii) Neither the UCITS or any of its investment assets shall be subject to any transfer/sale restriction imposed by any Irish authority with purposes of controlling the entrance and exits of flows in and out of the country;

- (iii) The UCITS based currency and investment assets shall not be subject to any restrictions imposed by any Irish authority with purposes of controlling the entrance and exits of flows in and out of the country;
- (iv) UCITS shall be listed in an Irish stock market. Stock and real estate assets shall be listed in an Irish capital market and debt assets conforming debt vehicles shall be registered and supervised by an Irish regulatory market authority;
- (v) At least 97.5% of the assets managed by the UCITS, the stocks, the real estate investment or debt assets shall fulfil with the investment regime applicable to Investment Companies specialized in Retirement Funds (“*SIEFORE*”);
- (vi) At least 90% of the total assets managed by the UCITS, stocks, the real estate investment or debt assets shall belong to companies supervised by an Irish authority;
- (vii) UCITS shall be subject matter of a public offering and shall be able to be traded intra-day during the operating hours of the market where it is listed;
- (viii) It shall allow that one or more qualified intermediary authorized by the UCITS (other than the sponsor or investment adviser) may create or redeem its units. In case the UCITS issues several stock series, they shall be kept in independent accounts.

 **A brief explanation of the registration process**

- (i) File (in hard copy and electronically via the System for the Transfer of Securities Information (“*Sistema de Transferencia de Información de Valores*”)) a writ requesting the National Banking and Securities Commission (“*Comisión Nacional Bancaria y de Valores*”) (“**CNVB**”) for its registration with the National Registry for Securities (“*Registro Nacional de Valores*”).
- (ii) File (in hard copy and electronically via the respective website/system) the request for the listing of securities with either of the Mexican Stock Exchange (“*Bolsa Mexicana de Valores*”) (“**BMV**”) or the Institutional Stock Exchange (“*Bolsa Institucional de Valores*”) (“**BIVA**”) (the only two operating stock exchange in Mexico).
- (iii) Respond to any and all observations made by the CNVB and the applicable Stock Exchange (either BMV or BIVA) with respect to the information and/or documents provided in the filings described in items a) and b) above. This stage of the process requires follow up with the authority and may include

conference calls and meetings with the CNBV and the applicable Stock Exchange (either BMV or BIVA) to discuss and/or negotiate and/or clarify any of their observations, as required.

- (iv) In the meantime, based on the outcome of the communications with CNBV and the applicable Stock Exchange (either BMV or BIVA), implement the proposed structure for the issuance (for example, incorporation of a trust).
- (v) File a writ with the CNBV and the applicable Stock Exchange (either BMV or BIVA) to override the confidentiality of the information and/or documents submitted under the filings described in items a) and b) above to make public the terms of the offer to the public in general for potential investment.
- (vi) Set up the required bank accounts for the reception of payments/proceeds.
- (vii) Once the CNBV and the applicable Stock Exchange (either BMV or BIVA) agree with the terms of the public offer, they will proceed to issue their authorization for registration.

*Note: The filings described in items a) and b) above are identical, confidential and should be made in Spanish. They should also include all documentation required for registration, as provided in the Mexican Regulations applicable to Issuers (“*Circular Única de Emisoras*”) (“**CUE**”), such as documents evidencing the legal capacity of the attorney-in-fact, copy of the documentation submitted before Central Bank of Ireland (including at least the Prospectus and Financial Statements for the last 3 years audited by an external auditor and any other submitted to the relevant Irish stock exchange), copy of the acknowledgement issued by the CNBV to make public the acknowledgement of the offer, a Prospectus compliant with and adjusted to Mexican law (the “**Mexican Prospectus**”), the draft documents of the proposed structure and/or the vehicle, draft agreement to be entered into with the Local Distributor, draft of the public offer notice, the required legal opinions, among others.

Further, when making such filings, a common representative, a placement agent and a local distributor (the latter needs to be a brokerage house in accordance with Mexican Law) should also be appointed.

Also please note that the Mexican Prospectus should include certain warnings addressed to local investors providing that the CNBV does not supervise the Irish UCITS, that the offer’s characteristics have been disclosed to the CNBV with informative purposes, that the offer and its terms are subject to the Irish legal regime, among others, as provided in Article 4-Bis 1 of the CUE.

▣ **Local Agent requirements**

Mexican Law does not provide specific requirements for the appointment of a Local Agent.

In any case, please note that the brokerage houses that participate in securities placements are legally bound to comply with Article 177 Bis of the Securities Market Law (the “**SML**”), which provides that brokerage houses must: **(i)** review and be certain that the Mexican Prospectus, and all other documents comply with the applicable legal provisions; **(ii)** evaluate the issuer that intends to carry out the offer, using methods generally recognized and accepted for such purposes, and **(iii)** act in compliance with the Mexican law.

▣ **Local Distributor requirements**

Mexican law provides that brokerage houses can act as Local Distributors.

▣ **Estimated timeline until marketing is permitted**

The timeline may vary drastically, depending on the CNBV and the applicable Stock Exchange (BMV/BIVA) workload and the number and type of observations they make, but based in our experience, the whole operation may take between 6 to 8 months.

▣ **Estimated costs (regulatory initial and annual)**

(i) Banking Commission costs:

Initial: Approx. MXN\$18,288 = 2,850 UDIs (the amount is based in Investment Units (“**UDIs**”), which equals to MXN\$6.416956 per UDI to this date). Please note that the UDIs value is related to the inflation rate and it varies every day.

Maintenance: Approx. MXN\$5,454 = 850 UDIs to this date.

(ii) Stock Exchange costs: shall vary depending on the issuance/offering value.

▣ **Estimated costs (local counsel for assisting with registration)**

Local counsel’s costs vary significantly depending on several factors. Therefore, a fee proposal shall be obtained and reviewed on a case-by-case basis.

PERU

HERNÁNDEZ & CIA ABOGADOS

Is it possible for Irish UCITS product to be sold in Peru?

Yes. Under the Peruvian Securities Law⁵, securities issued by a foreign entity (such as UCITS) are allowed to be offered to local investors and negotiated in the Peruvian securities market through private or public offerings, provided that the applicable requirements and conditions set forth under the applicable regulations are met.

Is it possible to privately place the UCITS without the requirements for local registration?

Yes. Pursuant to the Peruvian Securities Law, private offerings of securities, whether issued by local or foreign entities (such as UCITS), are not subject to supervision by the Peruvian securities' market regulator (the *Superintendencia del Mercado de Valores* or "SMV"), nor any registration is applicable in such case.

The Peruvian Securities Law defines private offerings by way of exclusion, stating that private offerings are those that are not considered public offerings. In addition, such regulation provides the following safe harbor rules under which offerings of securities are deemed private:

- (i) All offerings addressed exclusively to institutional investors (*inversionistas institucionales*).
- (ii) Any offering involving securities with a nominal or placement value of at least PEN 499,330.50 (equivalent to approximately US\$149,500.15 at the current exchange rate and duly updated considering the 2020 annual rate⁶).
- (iii) Any other offer as specified by the Peruvian securities' market regulator.

Are there exemptions for reverse solicitation or other exemptions?

The Peruvian Securities' Law and complementary regulation does not regulate any other exemptions to the requirement for local registration of securities under a public offer, other than that applicable to private placements.

However, to the extent that any reverse solicitation would occur outside of Peruvian territory, such act would generally be considered to be outside of the scope of local regulation. Nevertheless, a case by case analysis would be required to further determine if local rules would be breached under a reverse solicitation.

⁵ Legislative Decree No. 861.

⁶ The nominal amount set forth in PEN in the Peruvian Securities Market Law must be updated using the annual rate approved by the SMV.

▣ **What are the requirements for a public offer of an Irish UCITS in Peru?**

Pursuant to the Peruvian Securities Law, foreign entities that intend to offer securities within Peruvian territory through a public placement, are subject to the local regulations applicable to public offerings.

In order to carry out any public offerings in Peru, the Peruvian Securities Law requires the registration of the UCITS being offered and of the corresponding offering memorandum, in the Securities' Market Public Registry (*Registro Público del Mercado de Valores* or "RPMV") managed by the SMV.

▣ **A brief explanation of the registration process**

REGISTRATION OF THE SECURITIES

Prior to any public negotiation of the UCITS in Peru, said securities must be registered before the RPMV and the Lima Stock Exchange.

Pursuant to Peruvian regulations, the registration of foreign securities may be performed:

- (i) By the issuer, in which case, the requirements shall vary depending on whether the securities have been previously listed on a stock exchange included in a list approved by the SMV (i.e., the New York Stock Exchange, the Nasdaq Stock Market, the London Stock Exchange, among other relevant stock exchanges).

If the UCITS has been previously listed on a stock exchange approved by the SMV, the issuer and the securities shall be governed exclusively by the regulations of said stock exchange and the issuer shall disclose the same information before the Lima Stock Exchange as the information disclosed in its primary market. Also, for the registration of the UCITS in the RPMV and the Lima Stock Exchange, the issuer shall file the main following information before the SMV (among other applicable information):

- a. Information regarding the issuer (including the supporting corporate authorizations approving the filing for registration of the UCITS in the RPMV and the Lima Stock Exchange, the identification of the person in charge of the registration and the stock representative);
- b. Information regarding the UCITS being registered;
- c. Information regarding the foreign clearing house of the UCITS;

- d. Affidavit by issuer to oblige itself to execute an agreement with the Lima Stock Exchange and the Peruvian clearing house in which the UCITS are to be traded, and;
- e. The powers of attorney granted in favor of a representative in Peru for the registration process and compliance with disclosure requirements.

If the UCITS have not been previously listed on a stock exchange included in the list approved by the SMV, the issuer shall file the main following information before the SMV for the registration of the securities (among other applicable information):

- a. An offering memorandum describing certain aspects of the issuer and of the UCITS;
- b. Financial information;
- c. Corporate authorizations approving the filing before the Lima Stock Exchange;
- d. Dividend policies of the issuer;
- e. The foreign markets in which the UCITS are negotiated, including certain quantitative information of said markets;
- f. A legal opinion stating the main differences between the regulation of the foreign market and of the Peruvian securities' market;
- g. An opinion describing the main differences in the accounting regulations of the country of origin of the issuer and the Peruvian accounting regulations, and
- h. The powers of attorney granted in favor of a representative in Peru to represent the issuer before the SMV during the registration process and to comply with disclosure requirements while the UCITS are registered before the RPMV and the Lima Stock Exchange.

After the issuer has filed the relevant information before the SMV and the Lima Stock Exchange (which is done simultaneously), the SMV shall have a term of 20 business days to make observations to the filing or issue its registration resolution. If observations are made on the filing, the aforementioned term shall be suspended, and the issuer shall have up to 90 business days to remedy the observations.

- (ii) By the Lima Stock Exchange or a Promoting Agent (i.e., a stock broker that requests the registration of securities), if the UCITS being registered follow certain price indexes approved by the SMV (i.e., DJI, S&P 500, NYSE 100, NASDAQ 100, CAC 40 Index, AEX Index, FTSE 100 and TSX 60). In this scenario, the registration of the securities before the RPMV and the Lima Stock Exchange is automatic.

In the event that the UCITS are registered by the Lima Stock Exchange or a Promoting Agent, the Lima Stock Exchange shall assume certain obligations such as, providing a link in its web page to the foreign stock exchanges in which the UCITS are listed, inform in its web page the regulations and terms applicable to the issuers for disclosing information in the foreign markets in which they are registered, and inform the SMV if the UCITS are delisted from the foreign markets in which they were listed to exclude them from the RPMV and the Lima Stock Exchange, if applicable.

Note that, the Lima Stock Exchange may request before the SMV the inclusion of other foreign stock exchanges or price indexes in the lists approved by the regulator mentioned in (i) and (ii) above, if it considers that they meet the same or higher standards as those of the Peruvian securities' market regarding disclosure requirements, transparency and investor protection. Any new stock exchanges included in the list approved by the SMV are required to be under the supervision of a regulator that is ascribed to Annex A of the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions (IOSCO).

All requirements under this section apply to secondary negotiation of the UCITS.

REGISTRATION OF THE OFFERING MEMORANDUM

Following the registration with the RPMV and the Lima Stock Exchange, if a secondary public offer of the UCITS is to be made, an offering memorandum must be registered with the SMV. This document must contain the relevant information for the investors to decide an investment in the UCITS, in compliance with the requirements provided by the local regulations.

Please note that initial public offerings (i.e., offerings of newly issued securities that have not been previously negotiated) of foreign securities in Peru are also subject to the pre-registration of the securities as set out above and the filing of an offering memorandum with the SMV, in accordance to the applicable local regulations.

▣ **Documentation requirements for registration / country supplement requirement**

Please refer to the answer to the previous question.

▣ **Local Agent requirements**

If the UCITS is placed through a private offering, no local agent is required.

On the other hand, if the UCITS is registered before the RPMV and the Lima Stock Exchange by the issuer (as mentioned above), a local stock representative (*representante bursátil*) needs to be appointed (under the filing documents) in order to be the issuer's representative in charge of complying with the disclosure requirements of the foreign issuer before the SMV.

▣ **Local Distributor requirements**

If UCITS are placed through private offerings, no local distributor entity is required. In the case of public offers, a local stockbroker authorized by the SMV is required for the placement of the UCITS in Peruvian territory.

▣ **Estimated timeline until marketing is permitted**

Marketing in public offerings is permitted once the registration of the UCITS and of the offering memorandum has been completed (please refer to the question above for estimated timelines).

▣ **Estimated costs (regulatory initial and annual)**

Registration of the UCITS before the RPMV and the Lima Stock Exchange by the Issuer:

PEN 1,236.60 (circa. USD 370.00).

Registration of the UCITS before the RPMV and the Lima Stock Exchange by the Lima Stock Exchange or a Promoting Agent:

PEN 96.80 (circa. USD 30.00).

Registration of an offering memorandum for a public offering of the UCITS:

PEN 98.40 (circa. USD 30.00).

Registration of an initial public offering of the UCITS:

PEN 2,244.80 (circa. USD 670.00).

Monthly fees – SMV:

0.0035% calculated over the total amount of the securities being negotiated.

The Lima Stock Exchange does not charge any registration fees; however, it charges fees for the negotiation of the UCITS depending on the value of the securities being traded and if the securities are being traded through a public offering or private placements.

 **Estimated costs (local counsel for assisting with registration)**

Legal fees for the preparation, filing and registration of one application filed simultaneously, depending on the number of funds, are estimated at approximately US\$5,000.

Post registration, for any activities referred to the compliance of ongoing filings, annual legal fees are estimated at US\$ 4,000, considering an average number of filings of prospectus updates, supplements, financials, shareholder notices, excluding fund mergers, fund name changes, management company changes which may require an amendment to the registration.

Under a private offer, if the UCITS is to be offered to certain regulated institutional investors (that are subject to specific regulatory eligibility requirements), legal fees for the review of the documentation in order to confirm that the UCITS comply with the applicable regulatory eligibility would be estimated at US\$5,000.

VENEZUELA

D'EMPAIRE REYNA ABOGADOS, CARACAS, VENEZUELA

Regulatory Background and Market Practice

Historically, Venezuelans have opted to save and invest substantial portions of their wealth outside Venezuela. This is due to several reasons that escape the purpose of this article. Most recently, the fact that the size of the country's economy cannot realistically absorb the vast amounts of capital held by its citizens abroad has been added to the list of reasons. The Venezuelan financial sector and capital markets lack the size, depth, products and plumbing to receive even a fraction of Venezuelan's wealth.⁷

As a consequence, over the decades, private banking activities *vis-a-vis* Venezuelan clients have been undertaken mainly by international financial institutions that mainly use travelling advisors to sell investment products to their customer base in Venezuela.

The public offering of securities and investment funds in Venezuela is subject to myriad laws and regulations of which the most important are: (i) the Securities Market Law⁸ ("Sml"), and regulations issued thereunder by the Executive or by the Capital Markets Superintendent ("Snv"), (ii) the Organic Law on the National Financial System⁹, which contains general framework provisions on banking, capital markets and insurance, and (iii) the Investment Fund Law¹⁰ ("Iff"), which regulates the creation of investment funds, mutual funds and the public offering of their securities. These regulations are byzantine and formulated to regulate the public offering of securities issued by entities organized under Venezuelan law.

⁷ Compared to other stock markets in Latin America, the Venezuelan stock market is among the smallest in terms of market capitalization and trading volume. For the year ended December 31, 2014, the total market capitalization of the companies listed on the Caracas Stock Exchange decreased in absolute terms to U.S.\$43.2 billion. For the year ended December 31, 2015, the total market capitalization of the companies listed on the Caracas Stock Exchange increased in absolute terms to U.S.\$101.9 billion. For the year ended December 31, 2016, the total market capitalization of the companies listed on the Caracas Stock Exchange increased in absolute terms to U.S.\$359.17 billion. The market capitalization of companies listed on the Caracas Stock Exchange as of September 2019 is a fraction of the aforesaid figures. The U.S. dollar equivalent of Venezuela's monetary aggregates as of September 2019 (M1) is approximately US\$729 million.

Data obtained from <https://www.sec.gov/Archives/edgar/data/103198/000119312517376486/d505622dex99d.htm>

⁸ *Ley de Mercado de Valores*, published in Official Gazette N° 6,211, dated December 30, 2015. This law attempted to redesign the framework for regulating the securities market. Key characteristics include: (1) reinforcing the authority of the national securities regulator, the Sml, to regulate the capital markets to promote the participation of new issuers, including small and medium-sized companies; (2) promoting the financing of productive companies through national public debt instruments by brokerage houses and firms; (3) promoting capital markets in accordance with international financial standards and protecting the financial resources of investors while minimizing risks through regulation; (4) contemplating demutualization; (5) allowing licensed broker-dealers, brokerage societies and brokerage houses to participate in the market for public bonds and to maintain them in their portfolios; (6) authorizes the Sml to set the requirements that must be met by foreign corporations in order for them to be authorized to conduct the same activities as brokerage societies or brokerage houses; and (7) establishing procedures for the imposition of sanctions for violating the capital markets laws.

⁹ *Ley Orgánica del Sistema Financiero Nacional*, published in Official Gazette N° 39,578, dated December 21, 2010.

¹⁰ *Ley de Entidades de Inversión Colectiva*, Official Gazette N.º 36.027, dated August 22, 1996.

This is why investment funds registered outside Venezuela are typically offered to Venezuelan investors that reside in the country in a manner that will not trigger the registration and authorization requirements of the Sml and the lfl.

Safe Harbor and Private Placement Exemptions

There is no definition under Venezuelan law of what qualifies as a “private placement”, there are no express boundaries on private placements, and the law does not contain any clear-cut safe harbors or exemptions on registration based on the type of investor, such as exemptions on sales to accredited investors or qualified institutional buyers.

However, in our opinion, if the private placement of Irish registered investment funds are conducted in accordance with the guidelines described below, then their offering should not be construed as a public offering in Venezuela and should therefore not trigger any of the Venezuelan licensing and registration requirements, on the funds nor their securities.

Guidelines

If the private placement is (a) conducted privately in one-to-one meetings with investors or potential investors in or outside Venezuela, (b) no public advertisements are made in Venezuela, (c) no road-shows, blast emails or other forms of selling efforts are conducted in Venezuela, and (d) the placement is limited to a closed list of individually identified investors or potential investors, then, in our opinion, the sale of securities should not qualify as a public offering under Venezuelan law. Also, if all the relevant bank and custody accounts are located outside Venezuela and if only remote means of communication (e.g., phone, email, fax, etc.) are used to contact the purchasers (in addition to the cautionary recommendations listed under (a) through (d) above), then the risk that the offering of securities qualifies as a public offering will be greatly reduced and will therefore not be subject to the registration and other regulatory requirements of the Sml, lfl and regulations thereunder.

Reverse Solicitation

Offering the Irish registered funds to investors in Venezuela *via* reverse solicitation in and of itself will not exempt them from the registration and authorization requirements of the Sml and the lfl. As explained above, there are no specific safe harbors that will automatically exempt the offering from those requirements. However, if the guidelines described above are followed then the offering of the fund should not be subject to registration and approval in Venezuela. Reverse solicitation of the units or other securities of the fund could be used as a feature of the offering to further ensure that it is not subject to the Sml and the lfl, additional to those listed in the guidelines.

The Ifl contemplates open-end and close-end mutual funds. This law is a sophisticated law dating from 1996 when Venezuela had multiple mutual funds that invested in Venezuelan equities. Unfortunately, today there are virtually no mutual funds in Venezuela mainly for the reasons described earlier in this article. In practice, the process to incorporate, register a mutual fund and make a public offering of its units would take 12 months and would entail the preparation of an offering document and audited financial statements prepared under IFRS in Spanish. This is why international financial institutions that serve clients based in Venezuela that wish to place offshore funds with Venezuelan clients will always follow the above guidelines to ensure that Venezuelan capital markets, public offering and mutual funds regulations are not triggered by an offering, by reason of the antediluvian nature of the local regulations and the extremely long periods that will take to have a fund up and running for a public offering in Venezuela.

Since 1994, the Snv has required any company issuing debt securities or other types of securities in Venezuela (which may also include certain local mutual funds) to obtain a rating from two independent rating agencies registered with the Snv. However, as of 2002, for any company that issues commercial papers (debt issues ranging from 15 days to 360 days), the Snv may reduce the requirement from two independent rating agencies to one, depending upon the market conditions at that time.

Public Offer Requirements

There are no specific rules that would allow an Irish fund to be passported into Venezuela or that provide a streamlined approval process for funds that are registered outside Venezuela such as an Irish UCITS. Set forth below is a summary of selected Venezuelan mutual fund regulations that would become applicable to the public offering of an UCITS fund in Venezuela. We are including this short summary to provide the reader with a flavor of the complexity of the regulations and for why it is advisable to follow the guidelines to ensure that the Venezuelan registration, authorization and licensing requirements are not triggered.

Legal Form of the Sponsor

Eligible Fund Sponsors

The funds are sponsored by a management company or manager. Under Venezuelan Law the sponsor is the manager. The following are the eligible institutions that may act as fund managers: sole purpose *sociedad anónima*, in which case its name has to include the following denomination: "*sociedad administradora de fondos de inversión*".

Sponsor and advisor activities are not distinguished under Venezuelan law. Both activities can be performed by the manager or *Sociedad Administradora*. The

manager must have a qualified investment department that must meet on a weekly basis.

The manager's fees and expenses can be paid by the fund pursuant to the funds bylaws. The manager may charge underwriting fees for certificates of participation. In open-end funds, the manager may also charge redemption fees.

Investment restrictions

Fund managers may not invest in: (i) other mutual funds under management, (ii) other fund managers, (iii) securities issued or guaranteed by a company that directly or indirectly controls 20% of the shares of the mutual funds managing company, and (iv) securities issued or guaranteed by companies that are owned by one economic group that controls at least 20% of the shares of the mutual funds managing company.

Fund managers are not allowed to: (i) issue debt; (ii) receive cash in deposits; (iii) perform lending transactions, except over securities issued by the Venezuelan State; (iv) grant guarantees; (v) pledge securities, unless to guarantee credits to invest in securities issued by other funds or in securities guaranteed by a managing company; (vi) receive loans from the funds under management; or (vii) trade securities among the different funds under management.

Amendment of fund bylaws requires approval by the Snv.

Internal Requirements

Fund bylaws must (i) state the name, indicating if it is an open-end or a close-end fund; (ii) fund objectives; (iii) fees; (iv) investment policy, among other.

Participants' Rights

The fund bylaws must include provisions on participants' rights in connection with redemption rights, specifying the terms and conditions for redemptions. For close-end funds, the internal statute should additionally include: (i) authorized net asset value worth; (ii) dividend policy; and (iii) fund term.

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 4166
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

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.com

Contact Points

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

Tara O'Callaghan

E-mail: tara.ocallaghan@dilloneustace.ie

Tel : + 353 (0) 1 673 1831

Fax: + 353 1 667 0042

Helen Daly

E-mail: helen.daly@dilloneustace.ie

Tel : + 353 (0) 1 673 1830

Fax: + 353 1 667 0042

Fionnán Gannon

Email : fionnan.gannon@dilloneustace.ie

Tel : + 353 (0) 1 673 1867

Fax: + 353 1 667 0042

Aisling Barry

Email : aisling.barry@dilloneustace.ie

Tel : + 353 (0) 1 673 1864

Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2020 Dillon Eustace. All rights reserved.

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO