DILLON EUSTACE

A Guide to Selling Regulated Investment Funds in Asia

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1 INTRODUCTION

During the last thirty-five years Ireland has become a major hub for cross-border distribution and is one of the leading EU “exporting” jurisdictions for investment funds, for both UCITS and non-UCITS. More than 1,000 international fund promoters from over 55 countries use Ireland as their domicile of choice for fund products and seek to access not only the European marketplace but also markets outside the EU including the main Asia-Pacific markets.

Ireland is the number one hedge fund centre in the world and Irish UCITS funds are distributed in over 80 countries worldwide. Wherever your fund is domiciled, it can be serviced out of Ireland – 30 languages and 28 currencies are fully supported here. In particular, Japan, Hong Kong, Singapore, and Korea have become popular jurisdictions into which asset managers choose to market and sell their funds with particular acceptance of UCITS (the European "gold standard" product) in those markets.

Click here for Irish Funds Distribution.

Click here for Irish Funds Distribution Brochure

You can find out more facts and figures about the Irish Funds industry here.

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

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

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

Why Ireland

Click here for Irish Funds Why Ireland Brochure

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

As of May 2021, the total number of Irish domiciled funds (including sub-funds) reached 8,162 with total net assets of €3,644 billion (Source: Central Bank of Ireland). Of this total number of Irish domiciled funds and total net assets, UCITS funds accounted for 4,973 of the total with total net assets of €2,766 billion and AIFs accounted for 3,189 of the total with total net assets of €878 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 and Irish Funds).

Dillon Eustace Asset Management and Investment Funds team advises international and domestic asset managers, banks, insurers, pension funds, supranational organisations, prime brokers and other counterparties, fund administrators and custodians, securities lending agents and others in relation to all aspects of the asset management and investment funds industries. Our Asset Management and Investment Funds practice has been, and remains, one of the firm's core activities with Dillon Eustace partners having been to the forefront of the Irish industry from its beginnings in the late 1980s to the present day.

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

In this publication we have set out the various requirements for marketing a regulated Irish fund in Australia, Hong Kong, Japan, Korea, Malaysia, China, Singapore, Thailand, and Taiwan whether as a public offering or on a private placement basis. We would like to emphasise that this publication should serve as a general information guide only and does not purport to represent legal or tax advice. In the event of an Irish fund being sold or marketed in any of the jurisdictions referred to in the publication, specific legal advice should be sought in advance from local legal advisors who can be contacted through us.

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

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

Brian Dillon
DILLLON EUSTACE LLP

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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 set out at the end of the document or your usual contact in Dillon Eustace LLP. 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.

2 AUSTRALIA

**Minter Ellison*

Overview

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

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

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

Public Offering

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

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

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

As such, there are three primary factors that must be dealt with when considering the offering of an Irish domiciled fund in Australia, which are as follows:

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

Registration of an MIS

Requirement to Register as an MIS

Registration of an MIS with ASIC is dependent upon whether the MIS will be offered to Australian 'retail' or 'wholesale' (i.e., institutional) clients, regardless of whether the offering will be a public offer or by way of private placement. If a fund has more than 20 members who are 'retail' clients, then it must be registered as an MIS with ASIC. If a

fund consists solely of 'wholesale' (e.g.,, institutional) clients only then it is not required to be registered as an MIS with ASIC.

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

Registration Process

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

- an ASIC Form 5100;
- a copy of the MIS's constitutional documentation;
- a copy of the MIS's compliance plan;
- a statement signed by the directors of the proposed RE confirming that the MIS's constitutional document and compliance plan comply with the requirements under the Corporations Act; and
- an annexure cross-referencing the contents of the constitutional documentation against the requirements of the Corporations Act.

A fee of AUD 3,029 is payable upon lodging the application with ASIC.

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

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

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

- powers the RE has which allows them to borrow or raise money for the purposes of the MIS; and
- rights the members have which allow them to withdraw from the MIS.

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

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

Offering Documentation

Retail Clients

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

Wholesale clients

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

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

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

Private Placement

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

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

- the price or value of the securities being acquired is AUD 500,000 or more; or
- the financial product is not provided for use in connection with a business and the investor provides a copy of a certificate given within the preceding 6 months by a qualified accountant that states that the person has:
  - net assets of at least AUD 2.5 million; or
  - gross income for each of the last 2 financial years of at least AUD 250,000; or
- it is a 'professional investor' (for example, it is the holder of an AFS licence).

A client will be a 'retail' client where the client is not a 'wholesale' client.

AFS Licences

Requirement to Hold an AFS Licence

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

A 'financial service' includes (but is not limited to):

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

Broadly speaking:

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

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

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

Previously, ASIC provided specific exemptions from the AFS licensing requirement under various class orders for certain foreign financial service providers ("FFSPs") that were registered in certain jurisdictions. There was no equivalent exemption for FFSPs regulated by the Central Bank of Ireland. The class orders allow financial services to be provided by an exempted entity (and its employees and other representatives) in Australia provided such services are only provided to 'wholesale' clients. ASIC repealed these class orders on 31 March 2020 and the class orders currently operate under a transitional arrangement until 31 March 2023.

ASIC replaced the class orders with a new regulatory regime consisting of the Foreign AFSL regime, which requires FFSPs to register with ASIC, and Funds Management

Financial Services exemption, which permits FFSPs to provide financial services to certain Australian institutional investors. The commencement of ASIC's new regulatory regime has been paused pending the outcome of the Australian Federal Government's consultation on the restoration of the previous regulatory relief under the class orders and the creation of a fast-track licensing process for FFSPs. As at the date of this guide, the Australian Federal Government is still consulting with industry and ASIC will only consider applications under its new regulatory regime for FFSPs that cannot rely on the existing transitional arrangements.

Obtaining an AFS Licence

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

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

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

In terms of the fee payable to ASIC upon lodgement of an application for an AFS licence, ASIC has adopted a tiered approach that takes into consideration whether the application involves:

- an individual applicant or body corporate applicant
- an AFS licence covering retail clients or wholesale clients
- a low complexity product offering or a high complexity product offering
- an online application or paper lodgement

The fees can range from AUD 1,488 for an online application for an individual applicant (for wholesale clients and low complexity products) to AUD 11,305 for paper lodgement for a body corporate applicant (for retail clients and high complexity products).

3 HONG KONG

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Overview

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

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

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

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

Public Offering

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

The SFC will review an Irish UCITS fund on the basis that its structural and operational requirements and core investment restrictions already comply in substance with the Code. However, in the event of any deviation from the Code, compliance may still be required.

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

The following general requirements will also apply:

1 The fund must appoint a management company and a custodian/trustee acceptable to the SFC. Where the management company delegates the investment management function to an investment manager or adviser (i.e., where the investment manager and / or adviser undertakes the day-to-day

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

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

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

- the key investment personnel of the management company or those of the investment manager / adviser are expected to possess at least 5 years investment experience in managing unit trusts or other public funds with reputable institutions. At least two such key investment personnel must be nominated, and the expertise gained is in the same or similar type of investments as those proposed for the funds seeking SFC authorisation. The public fund experience of the key investment personnel may be satisfied on a group-wide basis for well-established fund management groups; and

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

Each of the new management company and investment manager / adviser will have to provide self-certification to the SFC to confirm its compliance with the eligibility requirements under the Code, including key investment personnel requirements noted above and certain financial and capital requirements. For example, the management company must have at least HK$10 million (or its foreign currency equivalent) in paid up share capital and non-distributable capital reserves (although such requirement does not apply to investment managers / advisers of UCITS funds). In addition, documentation demonstrating compliance of 5.5(a) of the Code in respect of each key investment personnel will have to be provided.

2 The SFC will also need to approve the depositary / trustee of the fund if it is not acting as depositary / trustee of other existing SFC authorised funds in Hong Kong. Most of the custodians/trustees operating in Ireland have been previously approved by the SFC.

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

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

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

Documentation

As mentioned above, the fund’s offering and constitutive documentation are required to comply with the Code. In addition, in the case of a UCITS fund, the SFC require a confirmation from the management company that such constitutive documents comply with all applicable Irish laws, regulations and requirements of the Central Bank of Ireland, that they are the latest versions that have been filed with the Central Bank of Ireland and that they do not exclude the jurisdiction of the courts of Hong Kong and contain provisions on connected party transaction provisions meeting the requirements of the Code. Depending on the structure of the fund, the constitutive documents may include the memorandum and articles of association, instrument of incorporation or the trust deed, the relevant service agreements (such as management agreement, investment management agreement, investment advisory agreement, administration agreement, custodian agreement, etc) and so on. For a fund whose net derivative exposure exceeds 50% of its net asset value, additional information including, a confirmation by the management company to the SFC that there are suitable risk management and control processes in place, which are commensurate with the risk profile of the fund to monitor, measure and manage all the relevant risks in relation to the fund, will be required. A summary of such risk management and control processes will also need to be disclosed in the fund’s Hong Kong offering document.

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

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

The fund’s Hong Kong offering document will be required to comply with the Code and the minimum disclosure requirements in the SFC’s Guide on Practices and Procedures for Application for Authorisation of Unit Trusts and Mutual Funds and it will also be necessary to prepare a Chinese translation of the offering document. There are a number of options available in satisfying this requirement. (i) The existing Irish prospectus can be supplemented by a Hong Kong Covering Document (for use solely in Hong Kong), which would contain specific additional information required to comply

with the Code. Thereafter both the Irish prospectus and the Hong Kong Covering Document can be translated into Chinese. (ii) A Hong Kong specific bilingual offering document can be prepared for distribution solely in Hong Kong. Such document would be drafted based on the existing Irish prospectus but with appropriate amendments required in order to comply with the Code. If this second option is utilised, the Irish prospectus would not need to be approved by the SFC (and therefore would not be available for distribution in Hong Kong). In this case, the only offering document in Hong Kong would be the Hong Kong specific bilingual offering document. Despite the availability of these alternative options, the use of a Hong Kong Covering Document accompanying the existing Irish prospectus appears to be the more common option used in recent years.

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

Specialised schemes

Chapter 8 of the Code sets out the authorisation requirements for different types of specialised schemes. These include:

- money market funds;
- unlisted index funds and index tracking exchange traded funds;
- funds that invest extensively in financial derivative instruments (i.e., funds with net derivative exposure of more than 50% but not exceeding 100% of net asset value);
- hedge funds (generally funds with net derivative exposure of more than 100% of net asset value);
- structured funds;
- listed open-ended funds (also known as active ETFs);
- closed-ended funds.

Use of Financial Derivative Instruments

The SFC distinguishes between UCITS funds whose net derivative exposure exceeds 50% of the net asset value and those whose net derivative exposure does not. Chapter 8.9 of the Code deals with the investment and operational requirements of non-UCITS funds that invest in financial derivative instruments ("FDI"). UCITS funds whose net derivative exposure exceeds 50% of the net asset value are deemed to have already complied with the relevant UCITS requirements and thus are not required to comply with 8.9 of the Code, except for the disclosure requirements set out in 8.9(j) of the Code and the disclosure requirement in the funds' KFS regarding the purpose of, and expected maximum leverage arising from FDI.

Time Frame for Authorisation

Within five working days of receiving a fund application, the SFC decides whether the application will be formally accepted. If so, the SFC will give its first round of comments

within 14 working days and also indicate whether the application is to be treated as standard or non-standard. Standard applications are fast-tracked with an aim that SFC authorisation (if granted) will be given on average between one to two months from the formal application acceptance. Non-standard applications are processed with an aim that SFC authorisation will be given on average within two to three months from formal acceptance.

The timetable for obtaining SFC authorisation will, to a large extent, depend on whether the investment managers of the fund are existing approved investment managers managing other existing SFC authorised funds, whether the custodian / trustee is acting as custodian / trustee of other existing SFC authorised funds, the nature of the fund for which authorisation is being sought, the extent of non-compliance of the fund with the requirements of the Code and the extent of negotiation with the SFC. Under the terms of the SFC application procedures, if SFC authorisation of the fund is not granted within six months from the date an application is taken up by the SFC, such application will automatically lapse.

Fees and Expenses

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

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

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

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

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

Private Placement

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

General Principle

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

Corporate Funds

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

- to an unlimited number of "professional investors";

- to no more than 50 people;
- with a total consideration not exceeding HKD 5 million (approximately US$650,000); or
- with a minimum investment of not less than HKD 500,000 (approximately US$65,000).

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

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

Non-Corporate Funds

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

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

It is possible to combine the above.

In each case, the offer document must include a prescribed warning statement to the effect that the contents of the document have not been reviewed by any regulatory authority in Hong Kong, and the recipient is advised to exercise caution in relation to the offer and obtain independent professional advice if he or she is in doubt of any of the contents of the document.

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

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

Prohibitions

Prohibition on Offering Unauthorised Funds

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

- to enter into or offer to enter into;
  - an agreement to acquire, dispose of, subscribe for, or underwrite securities; or

- a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite a structured product; or

- to acquire an interest in or participate in or offer to acquire an interest in or participate in, a collective investment scheme, unless the issue is authorised by the SFC.

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

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

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

Prohibition on Cold Calling

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

Prohibition on Promotion by Unlicensed Intermediaries

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

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

WARNING

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

4 JAPAN

**Mori Hamada & Matsumoto*

Overview

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

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

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

Investment Fund Categorisation and Registrations

Types of Investment Funds

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

- Foreign Investment Trusts
- Foreign Investment Corporations

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

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

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

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

Categories of Registrations

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

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

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

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

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

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

In the case of public offerings, the Securities of a Foreign Investment Fund must be registered with the KLFB in accordance with the FIE Act in advance of being offered in Japan unless the registration is exempted by the FIE Act.

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

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

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

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

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

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

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

Comparison between the Two Acts

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

Public Offering and Private Placement

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

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

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

Private Placement:

The QII Private Placement

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

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

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

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

The 49-Investor Private Placement

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

The 49-Investor Private Placement counts every person or entity solicited for the Securities, whether a QII or non-QII, towards the limitation of the number of investors, exclusive of the QIIs subject to the QII Transfer Restriction as explained below in the Hybrid Private Placement. It does not matter whether they subscribe for the Securities or not. The 49 investors are counted based on any investors solicited over the course of the preceding six-month period and the relevant Securities offered are deemed to be any issued securities the kind of which is identical to the Securities in question. If securities of such kind have already been offered to 49 investors in the preceding six-month period then another 49-Investor Private Placement cannot be made. The test of whether there are any issued securities the kind of which is identical to the Securities in question (as set out in the FIE Act) is as follows:

1 Whether the Issuer of the Securities is identical; and

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

a. Trust assets;

b. The terms and conditions of redemption of the Foreign Investment Fund and the distribution of profits of the Foreign Investment Fund; and

c. A redemption period of the Foreign Investment Fund; or in the case of a corporate-type fund, whether the fund is identical in terms of

d. the distribution of profits in respect of Securities.

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

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

The Hybrid Private Placement

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

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

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

Public Offering:

JSDA Rules and Selection Standards

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

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

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

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

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

Comparison Amongst the Offerings

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

Time Frame and Costs of Offerings

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

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

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

Adjustments to Comply with Japanese Laws

Generally Required Adjustments

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

- A Foreign Investment Fund must have as its objective the management of its assets through investment, investing more than a half of its assets in Specified Assets. "Specified Assets" mean securities, interests in financial derivative instruments, real estate, lease on real estate and other assets as set out in the ITIC Act;

- A Foreign Investment Fund must intend to distribute its Securities to multiple investors; and
- A Foreign Investment Trust must not pay any repurchase, redemption, or distribution proceeds in specie.

Public Offering

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

- the net assets of the Foreign Investment Trust must be not less than JPY100,000,000 or its equivalent in foreign currencies;
- the net assets of the manager who is the issuer of the Foreign Investment Trust or of the investment manager of the Foreign Investment Corporation must be not less than JPY50,000,00 or its equivalent in foreign currencies;
- a bank or a trust company must have been appointed as trustee or custodian to hold the assets of the Foreign Investment Fund;
- a Japanese resident must be appointed as a legal representative of the Issuer;
- the courts of Japan must have jurisdiction in relation to legal proceedings with respect to transactions of Securities acquired by investors in Japan;
- there must be certain restrictions on short selling and borrowing;
- the global risk amount of outstanding derivative transactions and other similar transactions entered into the account of a foreign investment fund, which is to be calculated in accordance with a “reasonable method” set up in advance, shall not exceed a certain ratio of their respective net asset value;
- credit exposures of a foreign investment fund to any single issuer of portfolio securities or counterparty of derivative transactions shall be managed and administered in accordance with a “reasonable method” set up in advance; and
- a change in the directors or officers of the Issuer requires an approval or the consent of the Central Bank of Ireland, the investors, the trustee or any other equivalent person or entity.

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

The QII Private Placement

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

Foreign Investment Trust

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

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

Foreign Investment Corporation

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

The 49-Investor Private Placement

Foreign Investment Trust

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

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

Foreign Investment Corporation

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

The Hybrid Private Placement

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

The Registration Process

FSA Registration

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

In advance of any offering of Securities in Japan, the Foreign Investment Fund must be registered with the FSA pursuant to the ITIC Act. The documents required are a Registration Statement for a Foreign Investment Trust or a Registration Statement for a Foreign Investment Corporation (collectively, the "FSA Registration").

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

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

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

accompanying document, it is the most crucial document to be translated to prepare the FSA Registration.

Timing: Prior to the Offering

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

Accompanying Documents

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

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

- Incumbency Certificate ("IC")

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

- Power of Attorney ("POA")

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

- Authorisation Certificate

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

- Legal Opinion

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

Securities Registration Statement (the "SRS")

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

The SRS is prepared in Japanese. The SRS generally expires in one year. Accordingly, if it is intended that the Securities will continue to be offered after the first anniversary of the start of the offering, an updated SRS must be filed for the next offering period. As

such, you must file an SRS for every offering year. No amendment to the SRS can extend the offering period. The new SRS for the next offering period is an "original" SRS, not an amendment to the SRS for the preceding period.

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

Timing: 16 Days Prior to the Offering

The SRS will become effective after full 15 days have elapsed since the filing, exclusive of the filing date and the effective date. Accordingly, the filing date of the SRS must be 16 days prior to the start of the intended initial offering of the Securities.

Accompanying Documents (together with their Japanese translations)

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

Comparison of Documents Required for the Differing Filings

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

Continuing Obligations

Amendment to and Termination of the FSA Registration

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

Amendment to the SRS and the Extraordinary Report

When a Foreign Investment Fund has been offered by way of Public Offering and its Trust Deed or Prospectus has been amended, the amendments must be disclosed to

the public. The disclosure to the public involves changes to both the prospectus and the SRS. In the case of a public offering, certain other material changes may require an immediate detailed disclosure, named an Extraordinary Report.

Annual Securities Report and Semi-Annual Securities Report

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

Investment Management Report

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

Continuous Obligations

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

5 KOREA

**Kim & Chang*

Overview

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

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

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

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

Registration with the Financial Services Commission

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

Registration of a Privately Placed Irish Fund

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

- the fees and expenses to be incurred by the investors are to be clearly disclosed in the fund documents;
- the asset management company (or general partner) of the offshore fund has not been sanctioned by the Korean regulators, equivalent to an administrative sanction of suspension of business or more severe sanction, or criminal penalties of fine or more severe penalties, for the past 3 years;
- the following entities relating to the offshore fund are not subject to suspension of business; (i) asset manager, (ii) trustee/custodian, (iii) distributor and (iv) administrator;
- the offshore fund has been created and established lawfully in compliance with the laws of the home country;
- the constituent documents of the offshore fund do not violate the laws and regulations of the home country, nor explicitly undermine investor’s interests; and

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

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

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

Registration of a Publicly Offered Irish Fund

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

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

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

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

Once the draft SRS and the Korean prospectus have been prepared, they will be submitted to the FSC for its review. During the informal review process, the FSC may issue comments and / or request certain revisions be made or documents be provided. Once the SRS and Korean prospectus have been finalised, the same will be submitted

to the FSC and the SRS will be uploaded to DART, the electronic reporting and disclosure system of the FSC. In the absence of any additional comments from the FSC, the SRS will go "live" 15 days after being accepted.

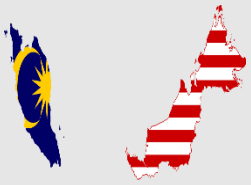
The FSC does not charge for processing the registration of an Irish fund for sale in Korea. Registration can be completed in about 4 to 6 months (assuming that the required information / documents are provided in a timely manner and the FSC does not raise any unforeseen issues).

Marketing

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

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

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



6 MALAYSIA

**Shearn Delamore & Co*

Overview

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

- Islamic funds which are constituted and domiciled in the Dubai International Financial Centre, and notified or registered with the Dubai Financial Services Authority;
- Islamic funds (excluding hedge funds and leveraged funds) which are authorized and primarily regulated by the Securities and Futures Commission Hong Kong ("SFC"), managed by SFC licensed managers (but exclude funds that are authorised under any mutual recognition agreement between SFC and another jurisdiction), comply with the requirements set out in Appendix 2 to the Foreign Funds Guidelines, and domiciled in Hong Kong or jurisdictions that have broadly implemented International Organisation of Securities Commissions (IOSCO) Principles relating to collective investment schemes and are signatories to IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information;
- A Qualifying Collective Investment Scheme (CIS) under the memorandum of understanding on streamlined authorization framework for cross-border public offers of ASEAN collective investment schemes (ACMF Retail MoU) from Singapore or Thailand ;
- An unlisted fund under the memorandum of understanding concerning cooperation and exchange of information on cross-border offers of ASEAN collective investment schemes to non-retail investors which complies with the requirements set out in the Foreign Fund Guidelines;
- Exchange-traded funds which are index-tracking and non-synthetic (ETF);
- Listed closed-end funds (CEF);
- Islamic funds by the Islamic Corporation for the Development of the Private Sector, declared as an international organization under the International Organisations (Privileges and Immunities) Act 1992 and any regulation issued under it which are allowed to invest only in the following permitted investments;
- Shares and other securities equivalent to shares that are dealt in on an organized market;
- Sukuk that are dealt in on an organized market;
- Islamic money market instruments that are normally dealt in on the money market;
- Placements in Islamic deposits;

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

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

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

Regulation of securities

The CMSA regulates securities offerings at two levels:

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

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

Part VI Requirements

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

Securities Commission's Recognition

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

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

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

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

- cover letter, specifying the approval/registration sought;
- the fund's deed or constitution, certified by a notary public;
- the applicable fee of RM2,000;
- in respect of private fund issued to qualified investors, the applicable fee of RM5,000 for each wholesale fund issued under the Lodge and Launch Framework; and
- In addition, for a retail fund, the prospectus of the fund.

Prospectus

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

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

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

- an individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;

- a corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;
- a unit trust scheme or prescribed investment scheme under the CMSA;
- a company registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 2016 which has been approved by the SC to be a trustee for the purposes of the CMSA and has assets under its management exceeding RM10 million or its equivalent in foreign currencies; or
- a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

Division 5 Part VI provisions relating to unit trusts

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

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

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

Unsolicited Invitation/Call

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

- invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;
- issuing notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the SC.

Restrictions in Advertising

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

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

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

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

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

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

Licensing for Regulated Activities

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

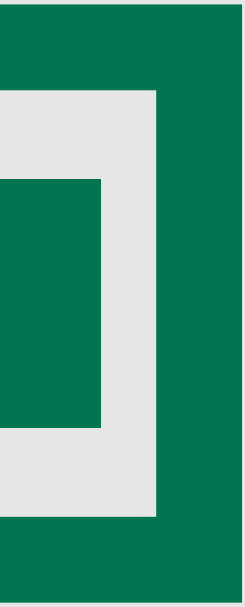
Only locally incorporated companies are eligible to hold a CMSL for dealing in securities, or any other regulated activity which permits dealing in securities as an incidental activity to that other regulated activity.

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

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

One exception in Schedule 3 to the CMSA that may apply to a foreign entity is where it carries on the regulated activity of dealing in securities for its own account or for its

related corporation through a holder of a CMSL who carries on the business of dealing in securities.



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

**Llinks Law Firm*

Overview

Under current PRC regulatory framework, only PRC domiciled funds (including retail funds and private funds) could be marketed / distributed in PRC by the PRC fund managers and/or the appointed PRC fund distributors with relevant fund distribution license granted by the competent authorities, and a PRC fund distributor is only allowed to market / distribute the PRC domiciled funds. The only exception is registered Hong Kong funds under Mainland – Hong Kong mutual recognition of funds regime. And in the coming future, the eligible PRC citizens of Guangdong-Hong Kong-Macao Greater Bay Area will be allowed to invest in eligible retail funds and wealth management products under the Cross-boundary Wealth Management Connect Pilot Scheme.

Based on the forgoing, it is not allowed for any onshore or offshore entities to market / distribute Irish Funds in PRC publicly or privately.

However, the prohibition of the products' marketing in PRC does not mean that no PRC investor could invest in Irish Funds directly or indirectly. Although PRC investors are subject to foreign exchange control, there are certain types of investors that can make foreign investment ("Eligible Investors"), as below:

- qualified investors with relevant approvals from competent authorities and registration with SAFE (such persons, "**Qualified Domestic Investors**"); and
- several specific national investment entities ("**National Investment Entities**").

Qualified Domestic Investors include PRC fund management companies ("**FMC**"), securities companies and their subsidiaries carrying out asset management (collectively, "**SC**") having obtained QDII license from China Securities Regulatory Commission ("**CSRC**"), commercial banks and their subsidiaries carrying out wealth management business ("**WMS**"), trust companies, insurance companies, insurance asset management companies having obtained QDII license from China Banking and Insurance Regulatory Commission ("**CBIRC**"), and Qualified Domestic Limited Partnership ("**QDLP**"), Qualified Domestic Investment Enterprise ("**QDIE**") fund managers are permitted to invest in overseas markets with approved foreign exchange quota. For most Qualified Domestic Investors, they usually will launch QDII products and raise money from PRC investors, and invest the assets of the QDII products into offshore funds, while insurance QDII usually invest abroad with their insurance funds (proprietary funds).

National Investment Entities include National Council for Social Security Fund ("**NCSSF**"), China Investment Corporation ("CIC") and several investment entities set up by SAFE. They are also allowed to invest in overseas financial instruments.

It is noteworthy that although the Eligible Investors can make offshore investment, they are subject to different investment restrictions by different regulators.

Qualified Domestic Investors

- QDII License Holders under CSRC

As a result of the Memorandum of Understanding ("**MOU**") signed respectively between the Irish Financial Services Regulatory Authority ("**IFSRA**") and CSRC, public offerings of Irish Funds may be made in the PRC through certain QDII under the regulation of CSRC.

An FMC and SC with the license of retail fund management by CSRC may sell its QDII Product by way of public offering – it can publish a prospectus in the press to solicit potential investors to invest in the product.

Although in practice a QDII Product by a retail fund manager may repackage an Irish Fund and sell that to the public, the offering documents of a QDII Product cannot direct to a specific Irish Fund product. Under the relevant QDII regulations, the investment of the proceeds raised through the QDII Products must be allocated to a basket of different products for risk control purpose. And the concentration limit of a normal QDII product in one single Irish Fund is 10% of the fund net asset, and 20% by a QDII FOF product.

A SC and FMC can also launch a privately offered product investing in a publicly offered Irish Funds, which means publicly offered Irish Funds can be sold in PRC by way of private placement. Generally, the concentration limit investing in one single Irish Fund by such privately offered QDII product is the same as a publicly offered QDII product. However, in the case of launching a QDII Product specific to one single investor, the said concentration limit of one single Irish Fund is not applicable. A single asset management scheme by a SC or FMC can utilize the most of product assets to invest in one publicly offered Irish fund.

In practice, some QDII products (mostly the privately raised QDII products) may invest in offshore structured notes which link to offshore private funds.

- QDII License Holders under CBIRC

An insurance company or insurance asset management company with QDII license may make overseas investment to offshore securities investment funds recognized by or registered with securities regulatory authorities in a prescribed list of countries / regions. And Ireland is included in the said list. The rules do not limit the offshore funds to investing in public-offered funds only. However, the offshore funds which are permitted to be invested by insurance companies with QDII license shall meet certain requirements imposed by CBIRC on AUM (minimum, USD30billion), track record, insurance funds or pension funds management experience, paid-in capital or net assets (minimum, USD30million), strong investment team, etc.

Since MOU of oversea wealth management on behalf of clients between IFSRA and CBIRC has not been signed yet, Irish funds are not allowed to be included into the investment scope of oversea wealth management on behalf of clients by a commercial bank, a WMS, or a trust company.

- QDII License Holders under local government

There is no restriction on the offshore funds to be invested by QDLP / QDIE funds launched by QDLP / QDIE fund managers.

National Investment Entities

- NCSSF

NCSSF shall be responsible for organizing and conducting overseas investment of National Social Security Fund, which can invest in offshore funds, and the offshore funds shall mean offshore funds publicly offered on the securities market, and the investment scope of the offshore funds shall meet the requirements on other investment products or tools stipulated in relevant rules.

- CIC

Based on the articles of association of CIC, the business scope of CIC's includes overseas investments in various financial products including overseas funds and no further restriction is provided therein.

- Investment entities set up by SAFE

There is no specific rule about such entities' investment scope and no public information could be found. We understand that the investment scope of such investment entities set up by SAFE is broad but need further check.

8 SINGAPORE

**Rajah & Tann*

Overview

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

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

Public Offer and Private Placement

Under the Securities and Futures Act (Cap. 289) of Singapore (the “SFA”), offshore funds may be offered in Singapore, whether those funds are managed by Singapore managers or foreign managers.

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

Definition of Collective Investment Scheme (“CIS”)

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

- the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
- either or both of the following characteristics are present:
  - the property is managed by or on behalf of a manager: or
  - the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled;
- either or both of the following characteristics are present:
  - the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title, or benefit in the property or any part of the property or otherwise):
    - to participate in or receive profits, income or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption, or expiry of, any right, interest, title or benefit in the property or any part of the property; or
    - to receive sums paid out of such profits, income, or other payments or returns; or
  - the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title, or benefit in the property or any part of the property or otherwise):

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

  I. the arrangement provides for the participants to receive any benefit other than those set out in the above sub-paragraphs if the purpose, purported purpose or purported effect is not realised; or

  II. the purpose, purported purpose or purported effect is realised.

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

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

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

Private placement exemption

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

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

In this regard, please note that the rules relating to this exemption state that an offer to an entity or trust formed primarily for the purpose of acquiring units in the CIS will be treated as an offer to the equity owners, partners, or members of that entity, or to the beneficiaries of the trust (as the case may be) for the purpose of the 50 person limit.

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

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

Furthermore, no selling or promotional expenses should be paid or incurred with the offer in Singapore other than those incurred for administrative or professional services, or commissions or fees for services rendered by certain categories of persons (such as, but not limited to, a holder of capital markets services licence to deal in capital markets products that are units in a CIS or a person licenced under the Financial Advisers Act (Cap. 110) (the “FAA”) in respect of marketing of CISs) (the “Expenses Restriction”).

Offer to institutional investors

An exemption from the prospectus requirements is also available for an offer that is made to an institutional investor (as defined under the SFA).

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

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

Institutional investors are narrowly defined under the SFA and include amongst others (i) Singapore financial institutions and government agencies, (ii) foreign central banks and central governments (as well as certain wholly and beneficially-owned entities set up by such central banks and central governments), (iii) foreign government agencies, (iv) certain prescribed multilateral agencies, international organisations and supranational agencies and (v) pension funds or CISs constituted in Singapore or elsewhere.

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

Restricted schemes

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

Exemptions are available where the offer is made only to (i) a "relevant person" (defined below) or (ii) a person who acquires units in the CIS as principal for a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction (“Restricted Scheme Exemption”).

Offers to accredited investors and certain other persons

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

A “relevant person” includes but is not limited to:

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

An exemption from the prospectus requirements is also available where the offer is made on terms that the units in the CIS may only be acquired by a person as a principal at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction.

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

Offers of a CIS in reliance on the Restricted Scheme Exemption must be made in or accompanied by an information memorandum (the "Information Memorandum") that contains certain statutory disclosures and a copy of which is submitted to the MAS for record purposes.

In addition, a notification of the offer must be submitted to the MAS and the CIS must be entered into the MAS' List of Restricted Schemes (the "List") before any offer to be made under this exemption. This notification must be done online, via a platform known as CISNET. The Information Memorandum is concurrently submitted as part of the notification process to the MAS. Upon submission, the MAS will process the notification, and if there are no queries or objections raised by the MAS, the MAS will enter the CIS into the List.

The MAS will not enter a CIS into the List unless certain prescribed requirements are satisfied, including but not limited to:

- the manager for the CIS being licensed or regulated to manage the assets of the CIS in the jurisdiction of its principal place of business;
- the manager for the CIS being a fit and proper person; and
- (if the CIS is constituted as a unit trust) the CIS having a trustee that is approved under the SFA.

The usual processing time from the time of submission or endorsement of the notification by a director of the responsible person of the CIS (assuming there are no queries from the MAS) is about two to three business days.

Ongoing Compliance

It should be noted that the person to whom the offer is made under the Restricted Scheme Exemption should be informed in writing of the fact that (i) the scheme is not authorised or recognised by the MAS and units in the scheme are not allowed to be offered to the retail public and (ii) the Information Memorandum is not a prospectus as defined in the SFA and, accordingly, statutory liability under the SFA in relation to the content of prospectuses does not apply, and the offeree should consider carefully whether the investment is suitable for him.

Offering of Collective Investment Scheme to the Public in Singapore

An offshore (i.e., not constituted in Singapore) CIS seeking to offer its units to the public in Singapore will be required to (i) be approved by the MAS as a 'recognised scheme', (ii) comply with the prospectus requirements prescribed under the SFA and (iii) comply with the product highlights sheet ("PHS") requirements prescribed under the SFA.

Recognition of Offshore Collective Investment Scheme

An offshore CIS may be approved by the MAS as a 'recognised scheme' if:

- the laws and practices of the jurisdiction under which the CIS is constituted and regulated affords to investors in Singapore protection at least equivalent to that

provided to them by or under the SFA in the case of comparable authorised schemes;

- there is a manager for the CIS that is licensed or regulated in the jurisdiction of its principal place of business and is a fit and proper person in the opinion of the MAS;
- there is a representative for the CIS for certain prescribed administrative and other functions under the SFA ("Singapore Representative");
- the CIS, the manager for the CIS and (where applicable) the trustee for the CIS comply with the SFA and the Code on Collective Investment Schemes issued by the MAS;
- the responsible person for the CIS furnishes the MAS with the name and address / contact particulars of the Singapore Representative; and
- the manager of the CIS (together with its related corporations) is managing at least S$500 million of discretionary funds in Singapore.

Application for Recognition of Offshore Collective Investment Scheme

The application for recognition of an offshore CIS is made by submission of a Form 2 application for the CIS ("Form 2") and payment of an application fee to the MAS via the MAS' online OPERA platform.

Registration of Prospectus of Collective Investment Scheme

In addition to the above, an offer of a CIS to the public in Singapore must be made in or accompanied by a prospectus that is prepared in accordance with requirements prescribed by the MAS and a signed copy of which is lodged with and registered by the MAS.

For an offshore CIS, the foreign prospectus can be submitted either on its own (provided it meets the relevant requirements prescribed by the MAS) or together with a Singapore wrapper to the foreign prospectus.

It should be noted that there are extensive regulatory disclosures required to be made in the prospectus, including but not limited to certain information relating to the manager of the CIS and any sub-manager / investment adviser appointed in respect of the CIS, investment details of the CIS and details on the subscription / redemption procedures.

For an offshore CIS that is a UCITS fund, there are also additional prospectus disclosures required to be made on a range of matters (e.g., risk disclosures, information regarding use of financial derivatives instruments and where supplementary information relating to the risk management methods may be obtained).

Application for Registration of Prospectus of Collective Investment Scheme

The lodgement of a prospectus of a CIS for registration by the MAS is made by submission of a Form 6 application (the "Form 6") and payment of a lodgement fee to the MAS via the OPERA platform.

A prospectus that is registered by the MAS has a 12-month validity period.

Therefore, if the intent is to continue making offers of the CIS to the public in Singapore after the expiration of the 12-month validity period, an up-dated prospectus must be lodged with and registered by the MAS.

If updates or amendments are required to be made to a registered prospectus during the 12-month validity period, a supplementary or replacement prospectus may be lodged with the MAS.

PHS

Where an offer of a CIS is made in or accompanied by a prospectus that complies with the above requirements, the prospectus must be accompanied by a PHS that complies with requirements prescribed by the MAS and a copy of which is lodged with the MAS.

There are prescribed regulatory disclosures that must be made in a PHS.

A PHS is lodged with the MAS via the OPERA platform (usually concurrently with the relevant prospectus that is being lodged). There is no application / lodgement fee payable for lodgement of a PHS.

Marketing in Singapore

The marketing of CISs in Singapore is regulated as the activity of “dealing in capital markets products” under the SFA. Therefore, to market CISs in Singapore, a person must hold a capital markets services licence for dealing in capital markets products or be duly exempt from such licensing requirement.

Typically, CISs which are offered to the public in Singapore are marketed by distributors and financial advisers. The role of a distributor in Singapore is usually performed by financial institutions such as banks, stockbrokers and financial planners with the appropriate licence or exemption.

It should also be noted that there are prescribed regulatory disclosures and requirements for advertisements of CISs which are offered to the public in Singapore.

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

9 TAIWAN

**Russin & Vecchi*

Overview

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

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

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

The private placement of Irish funds which are in the nature of “securities funds” in Taiwan is governed primarily by the SITC Law as well as by Articles 52 to 54 of the Rules. The private placement of Irish funds which are in the nature of “non-securities funds” in Taiwan is governed by various FSC rulings.

Public Offering

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

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

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

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

Eligible Offshore Funds

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

Discretionary Asset Manager Qualifications

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

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

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

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

The Offshore Fund's Qualifications

- The fund must have been in existence for more than one (1) year.

- The fund must have been approved for public offering in Ireland.

- The custodian of the fund or the parent company of the custodian must have certain minimum credit ratings from a rating agency recognised by the FSC (for example, a long-term credit rating of BBB- or above and a short-term credit rating of A-3 or above from Standard & Poor's Corporation, or equivalent credit ratings from Moody's, Fitch Ratings or Taiwan Ratings).

- Investment by the fund in Mainland China are limited to investment in securities listed on Mainland China exchange and bonds traded in the Chinese Interbank Bond Market and the aggregate amount of such investments must not exceed the percentage prescribed by the FSC (currently 20% of the net asset value of the fund) ("Mainland China Investment Limit").

- Unless a specific waiver is requested and obtained from the FSC, (i) the risk exposure of the non-offset position in derivative products held by the offshore fund for purposes of increase of investment efficiency is not permitted to exceed 40% of net asset value of such offshore fund and (ii) the total of the non-offset short position in derivative products held by an offshore fund for hedging purposes is not permitted to exceed the total market value of the relevant securities held by such offshore fund ("Derivatives Investment Limit").

- Taiwanese investors are not permitted to hold more than a percentage prescribed by the FSC (currently 50% of the net asset value of the fund).

- The fund is not permitted to invest in Taiwanese securities beyond a percentage prescribed by the FSC (currently 50% of the net asset value of the fund) ("R.O.C. Investment Restriction").

- The fund must not be denominated in New Taiwan Dollars or Renminbi.

- The Fund must be identified as an equity fund, a fixed income/bond fund, a balanced fund, or a money market fund (collectively, the "Permitted Fund Types") and meet the criteria for being categorized as such type of fund as set by SITCA (e.g., to be an equity fund, the fund must invest at least 70 % of its asset under management (AUM) in equity securities).

- The fund must not invest in gold, commodities and / or real estate.

- Such other requirements as may be imposed by the FSC from time to time which at present include that the fund size must not be less than US$100 million.

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

There is an "incentive program" under which an Offshore Fund Entity meeting certain criteria may, on an annual basis, apply for "recognition" and then, if recognized, elect certain benefits which include, inter alia, being able to (i) expedite the timeline for review of an application for derivative waivers for the relevant offshore fund; (ii) expedite the timeline for review and approval of a new fund application; (iii) apply to register three funds at one time, (iv) apply to register new types of offshore funds; or (v) increase the aggregate amount invested in Mainland China securities from 20% to 40% of the net asset value of such offshore fund.

Agents

Master Agent

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

- the names and addresses of the Offshore Fund Entity and the Master Agent;

- the rights, obligations and responsibilities of the Offshore Fund Entity and the Master Agent;

- the scope of services to be provided by the Master Agent and manner in which services will be provided;

- the payment method of remuneration and expenses by the Offshore Fund Entity to the Master Agent; and

- the terms for amendment and termination of the Master Agent Agreement.

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

The role and responsibilities of the Master Agent include:

- production of relevant information such as the Investor Information Summery and the Chinese language version of the Prospectus and delivery of such information to Distributors and investors;
- acting as the agent for litigious matters and delivery of documents of the Offshore Fund Entity in Taiwan;
- communication with the Offshore Fund Entity, and provision of relevant issuance and transaction information on the relevant offshore fund to investors;
- forwarding transaction instructions for purchase, redemption or transfer of offshore funds from the investor to the Offshore Fund Entity;
- assisting in matters related to protection of rights of investors in events where the Master Agent is not at fault; and
- any other matters as provided by laws, regulations or FSC rulings.

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

Distributors

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

Application for Registration

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

Assuming a Derivative Investment Limit waiver is not requested, the vetting process at the SITCA level will take several weeks and the process at the FSC level will take 2 to 3 months. If a waiver of the Derivatives Investment Limit is requested, the process will take considerably longer. The fee charged by SITCA is generally NT$3,500 (approximately US$125) for one fund and may vary based on the compliance track record of the Master Agent.

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

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

regulations, together with the details of the holdings of the relevant fund including a breakdown by countries, asset class and credit ratings (if applicable) as of the end of the most recent fiscal quarter to show that the relevant fund (i) does not invest in gold, commodities or real estate, (ii) does not exceed the Mainland China Investment Limit, and (iii) does not exceed the R.O.C. Investment Restriction. Also, if the prospectus cannot evidence that the fund meets the relevant criteria for Permitted Fund Types, a portfolio breakdown at the end of each of the most recent 12 months is also required to be provided to evidence that the fund meets the relevant criteria.

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

- A statement evaluating the fund size and an analysis of liquidity risk with respect to the fund and/or the underlying markets in which the fund invests (including investment regions) and, if liquidity concerns arise, the relevant handling measures to be taken, together with the fund size of each month for the most recent six (6) months and information on high risk financial products (if any) invested in by the fund which are then currently under FSC monitoring (e.g., investment amounts, percentage of investments and the amount of realized loss and unrealized loss).

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

- The most recent audited financial reports of the Manager.

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

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

- Documents evidencing that the Master Agent meets qualification requirements.

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

- A letter of undertaking from the Master Agent stating that each Distributor (if any) meets relevant qualification requirements, together with the relevant Distribution Agreements and List of Distributors (if there is more than one Distributor).

- A document evidencing the Master Agent's membership in SITCA.

- A document in prescribed form setting out basic information of the fund.

- A certificate from SITCA verifying that the internal auditor and business personnel, (at least three business personnel) of the Master Agent are sufficient and competent and a copy of the lease agreement and photographs of the information transmission system to obtain immediate investment and trading information.

- A statement from the Master Agent confirming that it has not been sanctioned by the FSC (or any other regulator) as set out in the Rules.
- A copy of the Master Agent's most recent audited financial statements.
- A copy of the Master Agent's and each Distributor's internal control system which must contain the items as set out in the Rules together with a checklist for such internal control system (required only where the Master Agent or the relevant Distributor is acting as the Master Agent or Distributor for the first time).
- A copy of the agreement between the Master Agent and the Taiwan Depository and Clearing Corporation.
- A checklist of the items covered by the applications in prescribed form.
- A global sales plan showing that the relevant fund is being actively marketed in jurisdictions other than Taiwan.
- A written explanation from the Master Agent as to how the relevant fund can be distinguished from other funds already registered by such Master Agent.
- Fact Sheet for the funds.
- The name, e-mail address, telephone number and other contact details of the relevant person in the Central Bank of Ireland for FSC to directly to confirm Irish regulatory matters related to the relevant fund.
- If the relevant fund employs anti-dilution or fair pricing adjustment measures, a detailed explanation of such anti-dilution/fair pricing adjustment measures which should include the timing or the threshold for triggering anti-dilution/fair pricing adjustment measures, the range of adjustment, the rationale for setting the relevant standards impact on investors, the most recent actual use of such anti-dilution/fair pricing adjustment measures and how the Manager assures the reasonableness and fairness of such measures.
- A written explanation from the Master Agent as to how it controls the percentage invested by Taiwanese investors in the fund in order to be in compliance with the upper limit Taiwanese investors' investment as prescribed in Taiwan regulations.
- A written response to certain anti-money laundering questions with respect to the relevant fund raised by the FSC.
- A written explanation from the Master Agent as to the necessity of registering the fund and whether the fund's cash positions are sufficient to support the liquidity requirements when liquidation.
- Document evidencing the Manager meets the contribution requirement; and
- A self-checklist from the Master Agent as to items of operation relevant to application for approval of public announcement requirements in prescribed form and the statement from the Master Agent as to the information provided in the self-checklist are true and correct.

Marketing

When a Master Agent or its appointed Distributor conducts business for the sale and offering of funds in Taiwan and undertakes advertisements, road shows and other promotional activities, it should abide by the SITC Law, the Rules, and relevant regulations.

Prohibited Marketing Activities

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

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

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

Warning Language

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

Print advertisements for funds other than principal-guaranteed funds and funds appealing to investment in high yields bonds must include the following wording: "This fund has been approved or agreed to be effective by FSC. However, there is no guarantee that it is risk-free. The past performance of the fund manager does not guarantee a minimum investment return. Apart from exercising the duty of care of a

good administrator, the fund manager will not be responsible for profits or losses of the fund, nor guarantee a minimum return. Investors should read through the prospectus before purchasing." For principal-guaranteed funds, funds appealing to investment in high yields bonds and funds the interests of which may be paid out of the capital, the warning language is required to be expanded to make clearer for investors the correspondent investment risks.

In the event of advertising through broadcasting, television, movies or other similar means using images or sound, one shall disclose the following content: "Risks are inherent in investments. Fund investment may both incur profits and suffer losses. Please read through the prospectus (investor information summary) carefully before purchasing."

Use of Fund Performance in Advertising Materials

If the fund's performance and sales numbers have been used as advertising or promotional content, the relevant disclosure must be made in accordance with, inter alia, the following:

- Any reference to fund performance and sales numbers (including awards and rankings) shall note the source and date of the information used.
- If the performance of the fund has been used as advertising content, the performance for at least the last three (3) years must be published. For a fund that has been established for less than three (3) years, the performance of the fund since establishment must be published. Also, it is not permitted to use the one-month performance record as advertising appeal or to cut out the performance from any specific period of time.
- If there is a comparison with another fund, the statistics or analysis must be of the same type of fund using the same method of calculation.
- No forecast of the investment performance of offshore funds can be made.
- All graphics and images in the advertisement must be clearly shown without distortion.

Maintenance of Marketing Materials

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

Private Placement

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

To be categorized as a securities fund, the relevant fund must be a collective investment fund which primarily invests in securities. Funds that invest in other asset classes (gold, real estate, commodities, currencies etc.) and/or derivatives linked to such other asset classes are not treated as securities funds. Also, private equity funds are not treated as securities funds. If the fund being privately placed is a fund of funds, no more than 40%

of the net asset value of such fund is permitted to be invested in underlying funds which do not qualify as securities funds under the above test and, if the fund is a feeder fund, the underlying master fund must be a securities fund. All funds not qualified as securities funds are treated as non-securities funds.

Private Placement of Securities Funds

Legal Framework and Qualifications

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

Manager Qualification

The private placement of securities funds to Institutional Investors (see definition below) does not require the relevant Manager to meet any specific qualification requirements. However, for private placement to Sophisticated Investors (see definition below), the relevant Manager must be licensed or qualified to engage in an asset management business in its home country.

Fund Qualification

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

Onshore Securities Funds Private Placement Agent

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

- paid-in capital, designated operating capital or business operating capital of not less than NT$30,000,000 (approximately US$1,071,000) and net worth of not less than its paid-in capital;
- specified qualified personnel, facilities and internal control reporting and customer assistance systems; and
- Not been sanctioned for specified violations within specified periods.

In addition to directly dealing with Institutional Investors (see definition below) or Sophisticated Investors (see definition below), an Onshore Private Placement Agent is also permitted to carry out the private placement of unregistered securities funds through sub-mandates to bank trust departments which departments would, in turn, make the funds available to Institutional Investors or Sophisticated Investors through specified trust of money accounts opened by such investors with such bank trust departments.

In doing so, the Onshore Private Placement Agent must enter into written agreements with such bank trust departments to document such mandates and the appointed bank trust departments must meet Distributor qualification requirement under the Rules.

Qualified Offerees

The private placement of a securities fund in Taiwan may be made to (i) entities in the banking industry, bills industry, trust industry, insurance industry or securities industry, or financial holding companies or such other legal persons or organisations as may be approved by the FSC, without limitation in number (collectively, “Institutional Investors”), and (ii) natural persons, legal persons or funds that meet conditions prescribed by the FSC, not exceeding 99 in number (“Sophisticated Investors”).

"Natural person", as referred to in the definition of Sophisticated Investors, means (i) an individual who has proven net financial assets exceeding NT$30 million (approximately US$ 1,071,000), or (ii) an individual who is making a single investment exceeding NT$ 3 million (approximately US$107,100) and the investor’s total assets in the form of deposits and investments with the relevant Onshore Private Placement Agent (including the aforementioned single fund investment) exceed NT$ 15 million (approximately US$535,500) and who represents that he/she has financial assets of NT$ 30 million (approximately US$ US$1,071,000) or more. A “natural person” is also required to have sufficient professional knowledge or trading experience in financial products.

“Legal person or fund”, as referred to in the definition of Sophisticated Investors, means a legal person or fund whose total assets exceeding NT$50 million (approximately US$1,786,000) in accordance with its most recent audited financial statement. The person authorised by “legal person or fund” to conduct the transactions is also required to have sufficient professional knowledge or trading experience in financial products.

In the case of a trust, the settler of the trust must meet the applicable requirements set out in the preceding two paragraphs.

The Manager or Onshore Private Placement Agent, as applicable, is obligated to conduct due diligence on the potential investors and obtain sufficient evidence from the investors to certify to the FSC that such investors are qualified investors.

Resale Restrictions

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

Tax and Litigation Agents

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

The tax agent, in theory, is responsible for filing tax returns and is liable for paying taxes if the Manager fails to pay. However, at present, no tax filing or payment is required.

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

If the Manager appoints an Onshore Private Placement Agent, normally the Onshore Private Placement Agent will act as the tax agent and litigation agent.

Disclosure of Information to Prospective Investors

The Manager (or an Onshore Private Placement Agent) shall, upon the reasonable request of an investor who falls within the definition of Sophisticated Investors and wishes to invest in the offshore fund by private placement, provide all relevant financial

and business information in respect of the offshore fund prior to completion of the private placement

Marketing

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

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

Filings

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

The First Filing

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

- For Placement to Institutional Investors:
  - An investment information chart of the offshore fund privately placed to professional investment institutions in the prescribed form; and
  - A copy of the approval letter issued by the CBC to the Onshore Private Placement Agent regarding relevant foreign exchange business (if applicable).
- For Placement to Sophisticated Investors:
  - A private placement report form in the prescribed format;
  - Offshore fund basic information chart;
  - A portfolio allocation and Taiwan investor information chart;
  - Internal control system of the Onshore Private Placement Agent;
  - Documents evidencing that the relevant Manager is licensed or qualified to engage in asset management business in its home jurisdiction;
  - A copy of the approval letter issued by the CBC to the Onshore Securities Funds Private Placement Agent regarding relevant foreign exchange business;
  - The agreement entered into between the Manager (or its designated entity) and the Onshore Private Placement Agent;
  - Offering memorandum (or equivalent document) and a Chinese translation thereof;
  - Investor Information Summary (in Chinese);

- A letter of undertaking stating that the beneficiaries (i.e., the relevant investors) qualify as Sophisticated Investors and the documents evidencing the same; and
- A review checklist in prescribed form to be filled out by the person preparing the filing.

Monthly Reporting

After the initial reporting, a monthly report must be submitted to the SITCA by the 10th business day of the month following the relevant month, regardless of whether or not there are additional sales or redemptions during the relevant month.

- For Placement to Institutional Investors:

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

- For Placement to Sophisticated Investors:

  - A private placement report form in the prescribed format;
  - A portfolio allocation and Taiwan investor information chart; and
  - A letter of undertaking stating that the beneficiaries (i.e., the relevant investors) qualify as Sophisticated Investors and the documents evidencing the same.

Fees

SITCA charges a one-time initial filing fee for each private placement report on a graduated scale depending on the number of funds being reported and type of the offerees. If the fund is to be privately placed to Sophisticated Investors, the filing fee for one privately placed fund is NT$4,000 (approximately US$143) where the Onshore Private Placement Agent is a SITCA member or NT$10,000 (approximately US$357) where the Onshore Private Placement Agent is not a SITCA member. If the fund is to be privately placed to Institutional Investors only, the filing fee for one privately placed fund is NT$2,000 (approximately US$72) where the Onshore Private Placement Agent (if any) is a SITCA member or NT$5,000 (approximately US$179) where the Onshore Private Placement Agent is not a SITCA member or there is no Onshore Private Placement Agent. No filing fee is required for subsequent monthly reports of changes.

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

Offering Documents

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

Other Documentation

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

Other Requirements

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

Private Placement of Non-Securities Funds

Legal Framework and Qualifications

The FSC issued various rulings on June 9, 2015, May 31, 2021, and August 13, 2021, which establish a separate private placement regime for non-securities funds under which duly licensed "qualified onshore placement agents"(i.e., SITEs, SICEs, securities brokers and banks with trust licenses) may, subject, in the case of a SICE or SITE, to obtaining case by case regulatory approval to do so, act for a Manager to place non securities funds to professional institutional investors, high asset customers and/or high net worth entities, as applicable.

Manager Qualification

In the context of placement of non-securities funds in Taiwan, the relevant Manager need not meet any specific qualification requirements.

Fund Qualification

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

Onshore Non-Securities Fund Private Placement Agent

Non securities funds are only permitted to be placed through a qualified onshore placement agent (not directly). The relevant Manager must appoint a qualified Taiwan SICE, SITE, securities broker, or bank with trust licenses as its onshore placement agent ("Onshore Placement Agent") to place the non-securities funds in Taiwan and, if the appointed Onshore Placement Agent is a SITE/SICE, it must meet capital and staffing requirements and obtain regulatory approval to act for the Manager. Once appointed and, if applicable, approved, an Onshore Placement Agent is permitted to (i) meet with, and promote the relevant funds to, qualified investors (see below), (ii) facilitate subscriptions, (iii) conduct KYC, etc. so long as such is done on a private one-on-one basis (e.g., no advertising or public promotion is permitted). Representatives of the Managers are also permitted to travel into Taiwan to meet such investors together with the Onshore Placement Agent but not independently.

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

- the SITE/SICE must have paid-in capital of not less than NT$70,000,000 (approximately US$2,500,000);
- unless the SITE/SICE has held its business license for less than one full fiscal year, the SICE/SITE must have net worth, as of the date of its most recent audited financial statements, of no less than the paid-in capital;
- the SITE/SICE must have the necessary information transmission facilities for immediate access to relevant investment and transaction information of the offshore fund entity;

- the SITE/SICE must have not been sanctioned for violations of specified regulations within specified periods of time; and

- the SITE/SICE must have specified business personnel and internal auditors meeting specific qualification requirements.

Banks that hold a trust license are not required to obtain any additional license/approval to purchase qualifying Non-Securities funds in trust on behalf of Professional Institutional Investors (see definition below).

Securities firms that hold a license to broker foreign securities are permitted to purchase non-securities funds as Onshore Non-Securities Fund Private Placement Agent for Professional Institutional Investors without any additional license/approval. However, to place non-securities funds to the Taiwan investors which are "High Net Worth Entities" (see definition below) or "High Asset Customers" (see definition below), the securities firms must be approved by the FSC to broker foreign securities to "High Asset Customers".

Qualified Offerees

Placement through SITEs/SITEs

The placement of non-securities funds can be made through a qualified SITE/SICE appointed by the Manager as its Onshore Placement Agent to "Professional Investment Institutions" and up to 99 "High Asset Customers".

"Professional Investment Institutions" consist of:

- foreign and domestic bank enterprises, securities firms, futures enterprises, insurance companies, fund management companies and governmental investment institutions;

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

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

"High Asset Customers" are defined as any natural or legal person meeting all of the following conditions and who have submitted a written application to the relevant Onshore Placement Agent to be recognized as a "High Asset Customer":

- He/she/it has provided proof of financial capacity that the net value of investable assets plus the value of insurance products is equivalent to NT$100,000,000 (approximately US$3,571,000) or more; or the net value of investable assets with the relevant Onshore Placement Agent reaches equivalent of NT$30,000,000 (approximately US$1,071,000), and has provided a statement undertaking that the net value of the investable assets plus the value of insurance products he/she/it holds is equivalent to NT$100,000,000 (approximately US$3,571,000) or more;

- The Onshore Placement Agent has confirmed that such natural person or the person authorized by the legal person to handle the transactions has sufficient professional knowledge and trading experience in financial products and that such natural person or legal person has sufficient ability to bear risks; and

- The person has agreed to be treated as a High Asset Customer after fully understanding that the relevant Onshore Placement Agent is exempted from certain responsibilities when providing financial products and services to High Asset Customers and natural persons or legal persons which are professional investors or natural persons or legal persons which are professional customers under other laws and regulations.

Placement through securities brokers

The placement of non-securities funds can be made through a qualified securities broker appointed by the Manager as its Onshore Placement Agent to (i) "Professional Institutional Investors", without limitation to the number, and (ii) "High Net Entities" and High Asset Customers", not exceeding 99 actual investors (not offerees) in aggregate.

"Professional Institutional Investors" are defined as domestic and foreign banks, insurance companies, bills and securities finance companies, securities firms, fund management companies, government investment institutions, government funds, pension funds, mutual funds, unit trusts, securities investment trust companies, securities investment consulting companies, trust enterprises, futures commission merchants, futures service enterprises, and other institutions approved by the FSC.

"High Net Entities" are defined as any entity meeting all of the following conditions and have submitted a written application to the relevant Onshore Placement Agent to be recognized as a "High Net Worth Entity":

- having net worth exceeding NT$20,000,000,000 (approximately US$714,286,000) based on such entity latest CPA-audited or reviewed financial report; provided, that, the financial report of an offshore entity is not required to be audited or reviewed by a CPA;

- having an specific investment unit staffed with suitable professionals, the manager of which unit meets at least one of the following qualifications: (a) having experience engaging in a financial product investment business in a financial, securities, futures or insurance institution for more than 3 years; or (b) having more than 4 years' experience in financial product investments; or (c) having an academic background or experience evidencing his/her professional knowledge and management experience in relation to financial product investment which proves his/her ability for sound and effective management of an investment business;

- having securities positions or derivatives product portfolios exceeding NT$1,000,000,000 (approximately US$35,714,000) as shown in its latest CPA-audited or reviewed financial report; provided, that, the financial report of an offshore institution is not required to be audited or reviewed by CPA; and

- having internal control systems with suitable investment procedures and risk management measures.

Placement through banks with trust licenses

The placement of non-securities funds can be made through a bank with a trust license as its Onshore Placement Agent to "Professional Institutional Investors" (see definition above), without limitation to the number.

Resale Restrictions

Although not expressly provided by the R.O.C. laws and regulations, in our view, privately placed non-securities funds are subject to the same resale restrictions as private placement of securities funds. Specifically, investors are only permitted to dispose of the funds by (a) redemption by the offshore fund, (b) transfer to a Professional Investment Institutions, Professional Institutional Investor, High Asset Customer or High Net Worth Entities, as applicable, or (c) transfer by operation of law (e.g., inheritance).

Tax and Litigation Agents

Under the non-securities funds safe harbour, the Manager must appoint an Onshore Placement Agent and the FSC expects that the appointed Onshore Placement Agent will handle all relevant litigation and tax matters. There is no need for the Manager to separately appoint a Taiwan tax agent or litigation agent.

Disclosure of Information to Prospective Investors

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

Marketing

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

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

Filings

Filings must be made with SITCA by the Onshore Placement Agent.

The First Filing

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

- A portfolio allocation and Taiwan investor informational chart in prescribed form; and

- A copy of the approval letter issued by the CBC to the relevant Onshore Placement Agent regarding relevant foreign exchange activities, or a statement from the Onshore Placement Agent stating that the relevant fund is a non-securities fund.

Monthly Reporting

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

Fees

Same as for private placement of securities funds.

Offering Documents

The Onshore Placement Agent is required to provide the investor with a copy of the relevant offering document.

Other Documentation

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

Offshore Units

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

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

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

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

10 THAILAND

**Law Plus Limited*

General

Investment units ("**IUs**") are securities under the Securities and Exchanges Act B.E. 2535 (A.D. 1992) of Thailand as amended ("**SEA**"). Distribution and sales of IUs in offshore funds to investors in Thailand online or by any other means by any offshore regulated foreign investment fund ("Offshore Fund") located outside Thailand to investors in Thailand is subject to the SEA and other laws of Thailand.

Securities Business Operation License

Distribution and sales of IUs of the Offshore Fund directly to investors in Thailand is an operation of securities business. The distributor or seller of the Offshore Fund IUs must be a local company and it must first obtain a securities business operation license ("SBO License") from the Securities and Exchange Commission ("SEC") of Thailand before it can distribute and sell such Offshore Fund IUs in Thailand.

Sales of IUs on a Non-Solicitation Basis

Distribution and sales of the IUs to investors in Thailand can be made without obtaining the SBO License only if these requirements have been met:

- The Offshore Fund issued its IUs outside Thailand.
- The distributor of the IUs does not solicit investors in Thailand by way of advertising or marketing in Thailand by its staff or agents operating or entering Thailand to solicit investors, but the distributor only receives unsolicited expression of interest from investors in Thailand.
- The buy and sale of the IUs take place outside Thailand.

Sales of IUs on Solicitation Basis

- If the Offshore Fund distributor solicits investors residing in Thailand from abroad and remotely sells the IUs to them from abroad, the Offshore Fund must appoint a securities brokerage company holding an SBO License to handle the sales of the IUs in Thailand, although the Offshore Fund itself is not required to obtain any license from the SEC.
- If any staff or agent of the Offshore Fund distributor enters into Thailand to solicit or sell the IUs directly to investors in Thailand, the Offshore Fund or its distributor must establish a securities company in Thailand and that company must obtain an SBO License from the SEC before it can solicit and sell the IUs in Thailand. A foreigner cannot obtain an SBO License.
- Any person who sells Offshore Fund IUs in Thailand without first obtaining an SBO License is subject to imprisonment of 2 to 5 years and a fine of THB200,000 to THB500,000, and a daily fine of not to exceed THB10,000 per day during the violation period.
- Any act of advertising or marketing Offshore Fund IUs by any means and in any form of media without first obtaining an SBO License is an offence under the SEA, and the Offshore Fund distributor can be subject to a fine of not to exceed

THB300,000 and a daily fine of not to exceed THB10,000 per day during the violation period.

Foreign Business License

- Securities business services are restricted to foreigners. They can be operated in Thailand by a foreigner / foreign legal entity only if the operator has obtained a foreign business license ("FBL") from the Director-General of the Department of Business Development of the Ministry of Commerce under the Foreign Business Act B.E. 2542 (A.D. 1999) ("FBA").

- Securities business service in organizing seminars or other events of training on securities investments, financial markets, technical analysis and other topics related to securities is restricted to the foreign company under the FBA. The foreign company can operate this service only after it has obtained an FBL under the FBA.

- Operating the securities business in violation against the FBA can be subject to imprisonment not to exceed 3 years and/or a fine from THB100,000 to THB1 million. The Thai court can order such business operation to be ceased.

- The securities business and the brokerage for selling of securities, including brokerage for services related to futures trading of securities, are exempted from obtaining an FBL under the FBA.

Foreign Exchange Control

- Retail investors in Thailand can invest directly in Offshore Fund IUs and other securities. However, each retail investor cannot invest in offshore securities for more than USD5 million in total per year.

- Retail investors can invest in offshore securities through an investment representative licensed by the SEC without a limit in the investment amount.

- Institutional investors, such as financial institutions, mutual funds, insurance companies, listed companies, can invest in offshore securities without limitation.

- Remittance of funds from Thailand by each investor for investment in securities abroad in a sum more than USD200,000 per remittance must be approved by the Bank of Thailand as the foreign exchange officer or its authorized agent (a commercial bank) under the Foreign Exchange Act B.E. 2485 (A.D. 1942) as amended.

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
Tower 49
12 East 49th Street
New York
NY 10017
Tel: +1 646 770 6080

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

Email: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

CONTACT POINTS

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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:

Brian Dillon
brian.dillon@dilloneustace.ie
Tel: +353 1 673 1713
Fax: + 353 1 667 0042

Brian Kelliher
brian.kelliher@dilloneustace.ie
Tel: +353 1 673 1721
Fax: + 353 1 667 0042

Tara O'Callaghan
tara.ocallaghan@dilloneustace.ie
Tel: +353 1 673 1831
Fax: + 353 1 667 0042

Helen Daly
helen.daly@dilloneustace.ie
Tel: +353 1 673 1830
Fax: + 353 1 667 0042

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