

How to set up
a UCITS
Management
Company
in Ireland

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Introduction

EU law provides that an entity which manages an EU based UCITS requires an authorisation to do so. Such an entity is known as a UCITS Management Company (“**UCITS ManCo**”).

The authorisation that such a UCITS ManCo requires is one under Directive 2009/65/EC as amended (the “**UCITS Directive**”) which has been implemented in Ireland by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as amended (the “**UCITS Regulations**”). These are supplemented by regulations and related guidance issued by the Central Bank of Ireland (the “**Central Bank**”).

Ireland is not only one of Europe’s leading UCITS domiciles but is also home to many UCITS ManCos, MiFID firms, alternative investment fund managers (“**AIFMs**”) and the new breed of dual AIFM/UCITS ManCo now referred to as the “**Super ManCo**”.

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

You are likely to be interested in this guide if you are:

- looking to set up or manage a UCITS in Europe; or
- looking to find a suitable EU jurisdiction from which to co-ordinate EU wide fund management activities; or
- considering your post-Brexit options, including for MiFID firms; or
- just looking to compare a stand-alone UCITS against third party UCITS or platform options.

If you have any questions, please contact us.

Dillon Eustace Asset Management Team
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1. What is a UCITS ManCo and what can it do?

In the following sections, we summarise what a UCITS ManCo is and what it can do.

Note that there are several different types of UCITS ManCos, each with different capacities. In some cases, they are set up to manage specific UCITS products. In other cases, they are designed to not only manage UCITS products but also to manage a range of non-fund client portfolios. Others may be set up to provide UCITS management solutions to those investment managers who do not wish to have their own UCITS ManCo, for cost or other reasons.

1.1 What is a UCITS ManCo?

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

When we refer to a "Management Company" (the term "Management Company" and "Manager" are used interchangeably and refer to the same entity), we are referring to the entity which has the ultimate responsibility for the overall management of a collective investment scheme. This overall management function encompasses overall control of the collective investment scheme, including the discretionary investment management function, the fund administration function and the distribution function and is referred to generally as "collective portfolio management".

If a UCITS ManCo is used for an Irish UCITS scheme, the contractual arrangements are structured so that the UCITS ManCo is mandated to carry out investment management, fund administration and distribution in respect of the Irish UCITS scheme but, in most cases, the UCITS ManCo delegates out fund administration to a regulated administrator and delegates the distribution activity to a global distributor and/or a number of distributors in the jurisdictions where the UCITS is being distributed. Some UCITS ManCos carry out significant asset management activities as well as distribution and we are seeing an increasing number of dual authorised UCITS ManCo / AIFM authorised Super ManCos. In many other cases, the UCITS ManCo delegates portfolio management activity to an appropriately regulated investment manager which, if it is a European entity, would most likely be authorised in its home EU Member State under the Markets in Financial Instruments Directive ("MiFID") or the Alternative Investment Fund Managers Directive ("AIFMD").

1.2 What can a UCITS ManCo do?

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

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

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

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

A UCITS ManCo may also extend its authorisation beyond collective portfolio management to include acting as discretionary investment manager for other types of non-fund investors in relation to individual portfolios of investments (sometimes specifically referred to as "**individual portfolio management**") and may also act as an investment adviser to different types of clients. However as the activity of individual portfolio management is an investment service under MiFID, UCITS ManCos which extend their authorisation to carry out this activity are subject to certain MiFID requirements such as those relating to capital, organisation requirements and conduct of business obligations.

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

Collective Portfolio Management

- (i) the management of unit trusts/common funds and of investment companies.
This includes:
 - (a) Investment management;
 - (b) Administration; and
 - (c) Marketing.

Individual Portfolio Management

- (ii) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of the Annex to the MiFID;

Non-Core Services

- (iii) (a) investment advice concerning one or more of the instruments listed in Annex I, Section C to MiFID; and

(b) safekeeping and administration in relation to units of collective investment undertakings.

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

1.3 Dual AIFM/UCITS Authorisation

Subject to obtaining the relevant authorisation, a UCITS ManCo can also be an alternative investment fund manager or (as more frequently referred to) an AIFM which would allow it also manage AIFs and market those AIFs cross border to professional investors with the benefit of an EEA passport. Such an entity is known as a “*Super ManCo*”. This opens up additional opportunities for a single legal entity with a single board and with a single capital adequacy requirement to manage UCITS, AIFs and other types of clients and across multiple jurisdictions. This is a very significant opportunity and, given that MiFID firms cannot be AIFMs, we have seen a number of MiFID asset managers give up their MiFID authorisations in place of a dual UCITS / AIFM authorisation.

A UCITS ManCo which proposes to manage an AIF will not be subject to the UCITS Regulations for that activity but will instead be required to obtain an additional authorisation under the Irish regulations which transposed the AIFMD into Irish law (the “**AIFM Regulations**”) and vice versa.

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

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

The Super ManCo can also expand its lines of business into individual portfolio management, investment advice, etc. and all with a full EEA passport. An additional point of note is that when originally introduced, the AIFM passport for individual portfolio management was defective. That deficiency has subsequently been corrected by way of an amendment (through Directive 2014/65/EU (so-called “**MiFID II**”)) but MiFID II has not yet been transposed across the EU. It has an expected implementation date of 3 January 2018.

Individual EU Member State regulators are, however, in practice agreeing to facilitate the cross-border provision of these additional services using on an *ad hoc* basis. The Central Bank is one such Member State regulator and the UK’s FCA is another.

Given that these – UCITS and AIFM – are two independent authorisations, it does mean that there is some element of duplication, one example of which is that the directors and senior managers need to be approved under both regimes so each need to submit a second individual questionnaire (ie. the Central Bank required form for the approval of directors).

Note also that to get an AIFM or UCITS ManCo authorisation, you have to manage an AIF or UCITS (as relevant) within twelve months of authorisation.

1.4 Summary

In summary, depending on the level of authorisation obtained (core v core plus ancillary), an Irish domiciled UCITS ManCo may, for example:

- manage an Irish UCITS; and
- act as investment manager / administrator / distributor to an Italian UCITS; and
- manage a Luxembourg UCITS and market it in Germany; and
- act as a non-AIFM manager of Irish AIFs such as a unit trust or common contractual fund; and
- act as investment manager / administrator / distributor to an EU / non-EU AIF; and
- manage on a discretionary basis individual portfolios of investments for non-fund clients; and
- provide investment advice to a French pension fund; and
- run a UCITS stocklending programme.

In addition subject to obtaining the relevant AIFM authorisation under the AIFM Regulations and thereby becoming a “*Super ManCo*”, a UCITS ManCo may also manage AIFs (in its capacity as the alternative investment fund manager or AIFM) and market those AIFs cross border to professional investors with the benefit of a full EEA passport.

2 How does the UCITS ManCo authorisation process work?

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

2.1 Who can apply?

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

It must comply with the capital requirements set out below (see para 3.1 below) and its directors and its managers must comply with Irish fitness and probity requirements and its shareholders must meet the Central Bank's suitability requirements.

2.2 Application process

Initially in advance of making a formal application, it is recommended that a meeting take place between the UCITS ManCo applicant and the Central Bank for the purpose of discussing the proposed business to be carried out by the applicant. This serves a dual purpose by enabling the Central Bank to familiarise itself with the background and business credentials of the applicant whilst identifying, at a critical early stage, any potential issues for the Central Bank with the proposed business.

This is then followed by the submission of a formal application which requires the preparation, completion and filing with the Central Bank of the following documents:

- (i) formal Application for Authorisation (there is a specific application form for this purpose);
- (ii) detailed Business Plan setting out the legal nature of the UCITS ManCo, types of activities which it proposes carrying on, its organisational structure, how it will perform the management functions prescribed by the Central Bank, three year financial projections, details of proposed capitalisation, overall group structure, sample of transaction flows for the type of transactions to which it will be engaged;
- (iii) Individual Questionnaires for each of its proposed Directors, senior management, each individual who holds directly or indirectly 10% or more of the capital or voting rights of the company and of any other individual who is in a position to exercise significant influence over the management of the company;
- (iv) Code of Conduct, Anti-Money Laundering procedures, reporting lines etc;

- (v) Group structure details (considerable information may be required).

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

2.3 Directors

Prior Central Bank approval is required for the appointment of directors.

A minimum of two directors must be Irish resident, the UCITS ManCo board must not have any directors in common with the board of the depository and the UCITS ManCo's board must also appoint a chairperson on a permanent basis.

As noted previously, directors are also subject to obligations under the Irish fitness and probity regime.

2.4 Authorisation Timing

The normal timeframe for getting authorised as a UCITS ManCo is 4 to 6 months from the date of submission of a complete application to the Central Bank.

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

It is important to note that the authorisation of a UCITS ManCo will normally run in tandem with the authorisation of the first UCITS to be managed by the UCITS ManCo.

2.5 Staffing Requirements

The Central Bank does not set down any specific number as a minimum staff complement but the Central Bank must be satisfied that adequate levels of staff and expertise will be employed to carry out the proposed activities of the UCITS ManCo. Such staff may be full time and/or part time employees and/or secondees.

Applicants need to understand that if they intend expanding into individual portfolio management or acting as a Super ManCo, for example, they are likely to be subject to greater staffing requirements.

In assessing staffing requirements, regard must also be given to general governance obligations also, the allocation and performance of “managerial functions” and the role of “designated persons” (See para 3.4 below).

The Central Bank will consider proposals under which individuals, including individuals from Irish service providers to the UCITS ManCo will, on a secondment basis, carry out some or all of the management functions of a UCITS ManCo. These individuals must currently be located in Ireland and be sufficiently qualified to undertake the relevant functions. In this regard, secondees are required currently to complete an Individual Questionnaire.

Additional requirements and criteria need to be taken into account when a UCITS ManCo delegates any of its functions to a third party. Furthermore, a UCITS ManCo must not delegate its functions to the extent that it becomes a letterbox entity.

2.6 Irish Regulatory Levies

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

3 UCITS ManCo Requirements

Below is a broad summary of the key requirements applicable to Irish UCITS ManCos.

3.1 Capital Requirements

A UCITS ManCo must have at all times:

- (i) initial capital of at least €125,000 (“**Initial Capital Requirement**”) plus the Additional Amount (if required), as set out below; or
- (ii) one quarter of its total expenditure taken from the most recent annual accounts (“**Expenditure Requirement**”);

whichever is higher (“**Minimum Capital Requirement**”).

When the net asset value of the collective investment schemes under management by a UCITS ManCo exceeds €250,000,000, the UCITS ManCo must provide an additional amount of capital equal to 0.02% of the amount by which the net asset value exceeds €250,000,000 (“**Additional Amount**”). A UCITS ManCo need not provide up to 50% of the Additional Amount if it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking and the form of guarantee is approved by the Central Bank.

The total of the Initial Capital Requirement and the Additional Amount required to be held by a UCITS ManCo is subject to a maximum of Euro 10,000,000. A UCITS ManCo is required to hold the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of eligible assets, which must be easily accessible, free from liens and maintained outside the UCITS ManCo’s group.

3.2 Operating Conditions

A UCITS ManCo cannot be a “*letter box entity*”, must be managed by at least two persons and the Central Bank requires that, in accordance with good corporate governance principles, the board is responsible for a number of managerial functions. For new UCITS ManCos these managerial functions are: (i) regulatory compliance (ii) fund risk management (iii) operational risk management (iv) investment management (v) capital and financial management and (vi) distribution.

3.3 Organisational Requirements

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

Importantly, the UCITS regime recognises the principle of proportionality. In other words, the application of most (but not all) of the new organisational requirements must take into account the nature, scale, and complexities of different UCITS ManCos.

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

- (i) *General Requirements:* UCITS ManCos are required to have adequate internal organisational and control mechanisms, clear reporting lines and assignment of responsibilities. Other requirements imposed are to protect confidentiality, the security and integrity of information and the requirement to ensure adequate business continuity policies. The principle of proportionality and the recognition of the ability to delegate, as highlighted above, apply.
- (ii) *Resources:* UCITS ManCos are required to employ “personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them” and to carry out due diligence on delegates. The principle of proportionality and the recognition of the ability to delegate, as highlighted above, apply.
- (iii) *Complaints:* UCITS ManCos are required to establish, implement and maintain effective and transparent procedures for complaints handling.
- (iv) *Electronic data processing, record keeping and other recording requirements:* UCITS ManCos are required to ensure timely and proper recording of each portfolio transaction and of subscription and redemption orders. In addition, they are required to ensure appropriate safeguards are put in place to ensure that electronic data processes are secure and that the integrity and confidentiality of recorded information in respect of the UCITS is maintained. UCITS ManCos are also subject to record keeping obligations similar to investment firms under MiFID.

- (v) *Accounting procedures:* From an accounting perspective at least, all assets and liabilities of a UCITS must be directly identifiable at all times. This would appear to be a practical necessity anyway in terms of the NAV calculation process.
- (vi) *Control by senior management and supervisory function:* The UCITS regime requires oversight by senior management in respect of delegated service providers. Senior management (which can include directors) must receive on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management, investment policy and strategies indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies. On a regular basis they must also receive various other written reports relating to the discharge of those functions.
- (vii) *Compliance function, internal audit function and risk management function:* UCITS ManCos are required to have a permanent compliance function, internal audit function and a permanent risk management function. Some of these requirements are subject to the proportionality principle referred to above.
- (viii) *Risk Management Policy:* UCITS ManCos are, again subject to the proportionality principle, required to establish, implement and maintain an adequate risk management policy, which addresses all risks which may be material for the UCITS ManCo, including market, liquidity, counterparty and operational risks.
- (ix) *Exercise of Voting Rights:* UCITS ManCos are required to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the UCITS' portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.
- (x) *Personal Transactions:* UCITS ManCos are required to identify and record "relevant person's" personal transactions and to ensure the notification and recording of personal transactions to the UCITS ManCo. They are also required to ensure that proper preventative measures are put in place to prevent potential breaches by individuals of the market abuse rules.

A "relevant person" means any of the following:

- (a) a director, partner or equivalent, or manager of the management company or investment company;
- (b) an employee of the management company or investment company, as well as any other natural person whose services are placed at the disposal and under the control of the management company or investment company

and who is involved in the provision by the management company or investment company of collective portfolio management;

- (c) a natural person who is directly involved in the provision of services to the management company under a delegation arrangement to third parties for the purpose of the provision by the management company of collective portfolio management.

- (xi) *Conflicts of Interest:* UCITS ManCos are required to adopt a written policy which will (a) identify when potential conflicts will arise and in doing so, they will need to consider the implications of group entities; and (b) set out the procedures to be followed and measures to be adopted in order to manage such conflicts. Again, the proportionality principle applies.

- (xii) *Rules of Conduct:* The rules of conduct are broadly grouped into four main areas, namely, the duty to act in the best interests of UCITS and their unitholders, the duty of UCITS ManCos to ensure a high level of diligence on the selection and monitoring of investments in the best interests of the UCITS they manage, reporting obligations in respect of execution of subscription and redemption orders, and best execution and order handling rules.

- (xiii) *Inducements:* A UCITS ManCo is prohibited from receiving fees and commission payments as well as non-monetary benefits in relation to the activities of investment management and administration, except if:
 - (a) paid or provided to or by the UCITS or on behalf of the UCITS;
 - (b) paid or provided to or by a third party (other than the UCITS) provided there is appropriate disclosure and the payment is designed to enhance the quality of the service; or
 - (c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by their nature, cannot give rise to conflicts with the management company duty to act in the best interests of the UCITS.

3.4 Managerial Functions

For Irish authorised UCITS ManCos, the Central Bank requires that, in accordance with good corporate governance principles, the board of directors of a UCITS ManCo is responsible for the following functions:

- (i) regulatory compliance;
- (ii) fund risk management;
- (iii) operational risk management;
- (iv) investment management;
- (v) capital and financial management; and
- (vi) distribution.

Delegates to be appointed by the UCITS ManCo must be approved by the board of the UCITS ManCo and where a UCITS ManCo delegates activities, its Business Plan shall identify the board member or other individual (“**designated persons**”) who will, on a day-to-day basis, monitor and control each of the individual activities identified at (i) to (vi) above.

3.5 Conflicts of Interest

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

3.6 Due Diligence

UCITS ManCos must establish policies and procedures in writing on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of a UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

3.7 Risk Management

UCITS ManCos are required to implement adequate risk management systems to identify, measure, manage and monitor appropriately all risks relevant to each UCITS’ investment strategy and to which each UCITS is or may be exposed.

3.8 Liquidity Risk Management

UCITS ManCos must employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to redeem units at the request of the unitholders of that UCITS. Where appropriate, UCITS ManCos must conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

UCITS ManCos must ensure that for each UCITS they manage, the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the instruments of incorporation or the prospectus of that UCITS.

3.9 Financial Control and Management Information

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 set out quite detailed rules in respect of the maintenance of records by a UCITS ManCo adequate for the purpose of financial control and management information.

3.10 Recordkeeping

A UCITS ManCo is required to retain, in a readily accessible form, for a period of at least six years, a full record of each transaction entered into by it (whether on its own behalf or on behalf of any collective investment scheme) and records that are sufficient to demonstrate compliance with the UCITS Regulations.

3.11 Valuation Obligations

UCITS ManCos are obliged in respect of each UCITS that they manage to establish and ensure adherence to a valuation policy that sets out the valuation methodology of the assets of that UCITS.

3.12 Depositary

A UCITS ManCo is required to ensure that for each UCITS which it manages, a single depositary has been appointed.

3.13 Transparency Obligations

UCITS ManCos must establish, implement and maintain transparent procedures and

arrangements to ensure that they deal properly and promptly with investor complaints. UCITS ManCos must also ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders.

3.14 Remuneration

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

The remuneration policies and practices apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the UCITS ManCos or of the UCITS they manage.

UCITS ManCos' remuneration structures are required to include:

- (i) criteria for calculating compensation for different categories of staff;
- (ii) a ban on guaranteed variable remuneration except in exceptional circumstances;
- (iii) rules for fixed and variable components of total remuneration (including a requirement that at least 50% of any variable remuneration is in the form of units of UCITS);
- (iv) rules on pension benefits; and
- (v) rules for payments related to early termination of employment (to ensure that failure is not rewarded).

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

Details of the up to date remuneration policy of a UCITS ManCo (including a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits and the composition of the remuneration committee where such a committee exists) must be disclosed in the prospectus of the UCITS managed by that UCITS ManCo. Alternatively, the remuneration policy may be summarised in the

prospectus, provided a statement is included that further details of the policy are available by means of a website (the address of which must be included in the statement) and that a paper copy of the policy is available to investors free of charge upon request (this information must also be disclosed in the Key Investor Information Document).

3.15 Delegation

UCITS ManCos may delegate their activities to third parties provided certain regulatory conditions are met such as, inter alia, the third parties are qualified and capable of performing the activities delegated to them and procedures are in place to enable the UCITS ManCo to monitor effectively at any time the activity of the third parties. Ultimate responsibility for any activities delegated by the UCITS ManCo to a third party remains with the UCITS ManCo.

Although a UCITS ManCo's liability is not affected by the fact that it has delegated any activities to a third party, the Central Bank considers that in order for a UCITS ManCo to discharge its responsibilities under the UCITS Regulations, the UCITS ManCo must exercise care and diligence in choosing and appointing the third party so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned and the UCITS ManCo must maintain an appropriate level of supervision over the third party and make appropriate inquiries from time to time to confirm that the obligations of the third party continue to be competently discharged.

4 Taxation

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

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

4.1 Irish Corporate Tax Rates

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

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

Typically passive income (non-trading income) will be taxable at the higher corporate tax rate of 25% and non-trading capital gains taxable at 33%. Other incentives that may be relevant are Ireland's R&D regime, IP Regime, as well an extensive double tax treaty network, with 72 signed treaties, 70 of which are currently in force.

4.2 Repatriation of After-Tax Profits

A UCITS ManCo can make dividend payments free of Irish dividend withholding tax ("**DWT**").

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

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

which one of the above exemptions applies (including the EU Parent-Subsidiary Directive), it is still necessary to complete and file a nil Dividend Withholding Tax form with the Irish Revenue Commissioners by the 14th day of the month following the month in which the dividend is made (i.e. a return is required to be made with the Irish Revenue Commissioners even in the event where nil withholding tax applies).

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

4.3 Transfer Pricing

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

Small or medium - sized enterprises are exempt from the transfer pricing measures. For the purpose of this exemption, a person is regarded as a “*small or medium-sized enterprise*” if it falls within the definition of “*micro, small and medium-sized enterprises*” as outlined in the Annex to Commission Recommendations of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. This essentially excludes an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million **and/or** an annual balance sheet total not exceeding EUR 43 million. These figures are assessed, where appropriate, on a worldwide group wide basis.

4.4 VAT

To the extent a UCITS ManCo is providing services to UCITS located outside of Ireland, then it will have full VAT recovery in respect of any VAT input costs that incurs in respect of activities directly attributable to the provision of such services. To the extent a UCITS ManCo incurs VAT on input costs in respect of the provision of VAT exempt services to Irish UCITS then it can recover all or a percentage of such VAT input costs at the combined recovery rate of the underlying Irish UCITS it manages.

4.5 Personal tax regime for Executives of the UCITS ManCo

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

There are also special tax reliefs for individuals moving to Ireland known as the Special Assignment Relief Programme (SARP) which can considerably reduce an individual's effective tax rate for 5 consecutive tax years. SARP provides for income tax relief on a proportion of income earned by an employee who is assigned by his or her relevant employer to work in the State for that employer or for an associated company in the State of that relevant employer. A relevant employer is a company that is incorporated and tax resident in a country with which Ireland has a double taxation agreement or a tax information exchange agreement. Where certain conditions are satisfied, an employee can make a claim to have a proportion of his/her earnings from the employment with the relevant employer or with an associated company disregarded for income tax purposes. In addition, employees who qualify for relief under this section may also receive, free of tax, certain expenses of travel and certain costs associated with the education of their children in Ireland.

5 How can Dillon Eustace assist you?

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

We can advise you on all aspects of the UCITS ManCo set up process, including:

- examining your business needs to assess different stand alone, supported or third party platform solutions;
- providing you with a pro forma Business Plan, a full set of policies and procedures, compliance matrix/plan and ancillary documents and then working closely with you to tailor them to your circumstances;
- assisting you with the application process, filing of forms and the completion of individual questionnaires;
- assisting you with incorporation of the company, letting of premises, hiring of staff, tax registrations and bank account opening;
- preparing UCITS ManCo agreement and agreements with delegates, etc;
- providing company secretary and carrying out fitness and probity checks.

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

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