

A Guide to
Selling Irish
Regulated
Investment
Funds in Asia

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

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INTRODUCTION

Ireland is one of the leading EU “exporting” jurisdictions for investment funds, both UCITS and non-UCITS, with international fund promoters using Ireland as their domicile of choice for fund products seeking to access not only the European market place but also markets outside the EU, including the main Asia-Pacific markets.

For all types of Irish domiciled funds, the main Asian markets (in particular Japan, Hong Kong and Korea) have become popular jurisdictions into which promoters choose to market and sell their funds with particular acceptance of UCITS (the European “gold standard” product) in those markets. Other jurisdictions are also opening up to Irish funds, most recently China following the signing of a memorandum of understanding between the Irish Financial Services Regulatory Authority (the “Irish Financial Regulator”) and the China Securities Regulatory Commission in 2008.

Ireland offers a wide variety of fund vehicles across the full range of product types from plain vanilla and alternative type UCITS, hedge funds and funds of hedge funds, to private equity and real estate, as well as a developed legal and tax infrastructure, a wide selection of fund service providers and a willingness on the part of the Irish regulatory authorities, notably the Irish Financial Regulator and Irish Stock Exchange, to adapt and develop regulations to keep pace with developments in the funds industry internationally.

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”.

As of December 2008, there were 5,025 Irish registered collective investment schemes (including sub-funds of umbrella type schemes) with assets of approximately Euro 650 billion. UCITS accounted for 80% of these assets (*Source*: Central Bank and Financial Services Authority of Ireland / Irish Funds Industry Association). As of June 2008, there were 353 promoters approved by the Irish Financial Regulator to act as promoters of Irish domiciled collective investment schemes (*Source*: Lipper Ireland Fund Encyclopaedia).

The Dillon Eustace Asset Management and Investment Funds team advises international and domestic asset managers, banks, insurers, pension funds, supranational organisations, prime brokers and other counterparties, fund administrators and custodians, securities lending agents and others in relation to all aspects of the asset management and investment

funds industries. Our team represents the largest number of Irish domiciled funds (*Source: Lipper Ireland Fund Encyclopaedia 2008/2009*) as well as funds domiciled in the Cayman Islands, the British Virgin Islands, Jersey and other centres reflecting the fact that 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.

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.

In this publication we have set out the various requirements for marketing an Irish fund in Japan, Hong Kong, Korea, China, Taiwan, Singapore and Australia, whether as a public offering or on a private placement basis. We would like to emphasise that this publication is 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 from local legal advisors.

We would like to thank the law firms in each of Japan, Hong Kong, Korea, China, Taiwan, Singapore and Australia 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 their details.

Other relevant Dillon Eustace publications available on our website include:

-  A Guide to UCITS In Ireland
-  A Guide to Multi-Manager Funds in Ireland
-  A Guide to Hedge Funds in Ireland
-  A Guide to Irish Private Equity Funds
-  A Guide to Regulated Irish Real Estate Funds

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DISCLAIMER:

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

JAPAN

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 to be filed by the Irish investment fund with the Kanto Local Finance Bureau of the Ministry of Finance Japan must contain all of the information that is required by the Irish Financial Regulator (as set out in its Non-UCITS Notices, in the case of Non-UCITS type funds, or UCITS Notices, in the case of UCITS type funds) and must not contain any information which conflicts with the Irish prospectus. Relevant confirmations must be provided to the Irish Financial Regulator in that regard.

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

"Securityholders" and the manager of the Foreign Investment Trust and a Foreign Investment Corporation are both referred to as an "Issuer".

Umbrella type funds have not been recognised under Japanese laws. Accordingly each sub-fund within an Irish umbrella fund must be registered separately. However, if one or more sub-fund(s) in the umbrella fund has been previously registered in Japan this will expedite the process of registering additional sub-funds.

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 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 defined 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 Foreign Investment Funds.

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 which is almost 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.

Since the FIE Act defines financial instruments tradable in Japan by reference to the ITIC Act, any entity that wishes to qualify as a Foreign Investment Fund must first of all meet the requirements of the ITIC Act and then the requirements of the FIE Act.

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 Issuers of 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 Securityholders 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
<i>Object</i>	<i>Securities</i>	<i>Foreign Investment Funds</i>
<i>Regulator</i>	KLFB	FSA
<i>Distinction between Public Offering and Private Placement</i>	Yes	Not important
<i>Primarily</i>	- Issuer and	Issuer

<i>Responsible Party</i>	- Distributor in Japan	
<i>Initial Registration</i>	Securities Registration Statement	Registration Statement concerning Foreign Investment Trust / Registration Statement concerning Foreign Investment Corporation
<i>Continuous Reports</i>	Securities Report; and Semi-annual Securities Report	None, except Management Report
<i>Amendment to Registration or Reports</i>	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
<i>Disclosure</i>	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 in Japan the first decision to be made will be to decide on the type of offering to be made.

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 and the costs involved are very much dependent upon the type of offering.

The QII Private Placement

The QII Private Placement is unofficially called the "Professionals Private Placement" because Qualified Institutional Investors ("QIIs") are considered to be professionals 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 advisors, investment corporations and any corporation or individual who has registered with the regulator that it holds sufficient amounts of securities, as required by law) are eligible as

QIIs.

It is important to have a distributor or a number of 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 Placements may also be able to avail of exemption from the ITIC requirement to periodically deliver investment management reports to Securityholders and to the FSA, which otherwise would need to be prepared and delivered for every accounting period.

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. It does not matter whether or not they actually subscribe for the Securities. The 49 investors are counted on the basis of any investors solicited over the course of the preceding six month period and the relevant Securities offered are deemed to be any issued securities identical to the Securities in question. If identical Securities 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 identical to the Securities in question (as set out in the FIE Act) is as follows:

- Whether the Issuer of the securities is identical; and

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

- Trust assets;
- The terms and conditions of redemption of the Foreign Investment Fund and the distribution of profits of the Foreign Investment Fund; and
- A redemption periods of the Foreign Investment Fund; or

- In the case of a corporate-type fund, whether identical in terms of 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 of each sub-fund may be offered by way of a 49-Investor Private Placement.

It is critical to have a distributor or a number of 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

A hybrid type of Private Placement is also available, which 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, so that those 49 investors will not be regarded as QIIs.

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

Public Offering: JSDA Rules and Selection Standards

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

The JSDA Rules provide that a JSDA member must confirm certain requirements in advance of the offering 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 funds comply with all of the JSDA requirements.

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

Comparison Amongst the Offerings

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

Time Frame and Costs of Offerings

The time frame and costs vary depending on the type of offering sought. The most expensive component of the offering process is the translation of documentation into Japanese. Usually, the determination as to which documentation must be translated is made by reference to the FSA Registration explained below.

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

Public Offering:	1.5 – 2.5 months	9.0 – 12 million JPY (60,000 - 80,000 EUR)
QII Private Placement:	0.5 – 1.5 months	1.5 – 3.0 million JPY (10,000 – 20,000 EUR)
49-Investor Private Placement:	0.5 – 1.5 months	2.0 – 3.5 million JPY (12,500 – 24,000 EUR)
Hybrid Private Placement:	0.5 – 1.5 months	2.0 – 4.0 million JPY (12,500 – 27,000 EUR)

Amendments Required to Comply with Japanese Registration Requirements

Generally Required Adjustments

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

- A Foreign Investment Fund must have as its objective the management of its assets through investment, investing more than a half of its assets in Specified Assets. "Specified Assets" mean securities, interests in financial derivative instruments, real estate, lease on real estate and other assets as set out in the FIE Act. Commodities or interests in commodities derivatives are not included in the definition of Specified Assets;
- A Foreign Investment Fund must have as its purpose the acquisition of its Securities by multiple investors; and
- A Foreign Investment Fund must pay any repurchase, redemption, or distribution proceeds in cash.

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 Trust 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 a trustee to hold the trust assets;
- 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 Securities acquired by investors in Japan;
- There must be restrictions on short selling and borrowing; and
- A change in the directors or officers of the Issuer must require an approval or consent of the foreign regulator (the Irish Financial Regulator in the case of Irish domiciled funds), the investors, the trustee or any other equivalent person or entity.

The Selection Standards often require substantial changes to an existing trust deed or memorandum and articles of association as well as the prospectus. As such, it is often easier 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 as a transfer to non-QIIs would lead to the same result as a Public Offering but without complying with the strict requirements of a Public Offering. For that reason, the FIE Act imposes the following conditions in order to inform potential QII Securityholders prior to the acquisition of the restriction on the transfer.

Where these are not directly addressed in the Irish fund's documentation, changes to that documentation may be required as outlined below.

Foreign Investment Trust

The units must have a name certifying that they are subject to a restriction on resale. In

practice, the words "(for Qualified Institutional Investors Only)" will be added to the name of the relevant classes of the Foreign Investment Trust that are being offered to QIIs. This will require an amendment to the trust deed and the prospectus of the Foreign Investment Trust.

Foreign Investment Corporation

Although the wording "(for Qualified Institutional Investors Only)" is not required in the case of a Foreign Investment Corporation, any solicitation for acquisition must be made on the condition that the acquirer must enter into an agreement that it shall not transfer the shares to a non-QII (the "Agreement on Transfer Restriction"). Since this Agreement on Transfer Restriction is additional to the memorandum and articles of association and the prospectus of the Foreign Investment Corporation, it will not require changes to the existing English language documents. The Issuer must not have issued any securities by way of Public Offering in Japan.

The 49-Investor Private Placement

Foreign Investment Trust

Like the QII Private Placement, the 49-Investor Private Placement also requires a restriction on transfer.

Foreign Investment Corporation

No specific requirements are needed except that the Issuer must not have issued any 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. In practice, it may be more convenient to divide the Foreign Investment Fund into two sub-funds or two classes of Securities for the offerings to be made to QIIs and to non-QIIs. Alternatively, the following requirements must be met.

Foreign Investment Trust

Like the QII Private Placement, the units must have a name certifying that they have a restriction on resale for QIIs (the "Hybrid QII Name"). In practice, the Foreign Investment

Trust will add the following words to classes of unit to be offered to QII: "(for Limited Number of Investors and Qualified Institutional Investors with the Re-Sale Restriction to Non-Qualified Institutional Investors)".

Foreign Investment Corporation

Although the Hybrid QII Name is not required in the case of a Foreign Investment Corporation, the Agreement on Transfer Restriction is required for QII investors, which will not require changes in the existing English language documents. The Issuer must not have issued any securities by way of Public Offering in Japan.

Comparison of Adjustments among the Offerings

Types of Offering	I. Public Offering	II-a. QII PP	II-b. 49-Investor PP	II-b. Hybrid PP
<i>Selection Standards</i>	Required	No		
<i>Transfer Restriction</i>	No		Required in a trust deed in the case of Trust-Type only	
<i>QII Name</i>	No	Required in the case of Trust-Type only	No	Required in the case of Trust-Type only
<i>Agreement on Transfer Restriction</i>	No	Required in the case of Corporate-Type only	No	Required in the case of Corporate-Type only
<i>Documents required to amend</i>	Trust Deed Prospectus	Trust Deed Prospectus	Trust Deed	Trust Deed Prospectus

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 concerning a Foreign Invest Corporation (collectively, the "FSA Registration").

The FSA Registration must be in Japanese and is made by the Foreign Investment Fund's Japanese legal counsel. Depending on the information to be included, the FSA Registration usually consists of a document which is 10 to 40 pages long, excluding accompanying documentation. Together with the accompanying documents and translations, it is usually amounts to between 50 and 200 pages.

The FSA Registration is required for both public offerings and private placements.

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

Timing: Prior to the Offering

The FSA Registration must be made prior to any public offering or private placement. Usually, the date of the FSA Registration is one day prior to the start of the initial offering of the Securities. The Authorisation Certificate, detailed below, 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. These are usually the longest documents which require translation. Therefore, the length of the constitutional documents impacts directly on the costs of a Japanese registration.

- Incumbency Certificate ("IC")

The representative or representatives of the Issuer in the FSA Registration who execute the POA (detailed below) must be certified to have such authority by way of an incumbency certificate ("IC"). This is usually certified by another officer or director

or a company secretary of the Issuer. Certification in an IC by the person who executes the POA is not permitted. The form of an IC is usually provided by Japanese counsel and an executed original of the IC is required.

- Power of Attorney ("POA")

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

- Authorisation Certificate

A copy of the letter of authorisation from the Irish Financial Regulator must accompany the FSA Registration (the "Authorisation Certificate"). The Authorisation Certificate is required for the FSA Registration only.

- Legal Opinion

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

Securities Registration Statement (the "SRS")

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

The SRS must be prepared in Japanese. It usually consists of 50 to 300 pages (excluding accompanying documents). Together with the accompanying documents and their translation, it usually runs from 150 to 600 pages long. The SRS expires after 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, a revised 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 new 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 strictly identical to the SRS at all times. Whenever the prospectus is amended, an

amendment to the SRS must be filed simultaneously.

Timing: 16 Days Prior to the Offering

The SRS will become effective after a full 15 days have elapsed, 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 initial offering of the Securities.

Accompanying Documents

- 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	SRS with the KLFB
<i>Trust Deed / Memo & Arts</i>	Required	Required
<i>Minutes of Board Meeting about Issuance</i>	No	Required
<i>Incumbency Certificate</i>	Required	Required
<i>Power of Attorney</i>	Required	Required
<i>Certificate of Authorisation</i>	Required	No
<i>Legal Opinion</i>	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 Authorisation Certificate 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.

Securities Report and Semi-Annual Securities Report

In the case of public offering, a 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 Securityholders 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
<i>Amendment to and Termination of the FSA Registration</i>	Required	Required
<i>Amendment to the SRS</i>	Required	No
<i>Extraordinary Report</i>	Required	No
<i>Securities Report and Semi-Annual Securities Report</i>	Required	No
<i>Investment Management Report</i>	Required	Required (QII PP may be exempted.)

HONG KONG

Overview

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

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

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

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

Public Offering

The SFC authorisation process is a two step process involving the approval of both the manager of the fund and its offering and constitutive documents. In order to obtain authorisation, the fund must demonstrate compliance with the SFC's Code on Unit Trusts and Mutual Funds (the "Code"). Where compliance with a specific provision of the Code is not possible, an application for a waiver from compliance may be made to the SFC. However, as a general rule, it is becoming increasingly difficult to obtain SFC waivers from the Code.

The SFC will review the 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.

The following 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 in Appendix A2 of the Code. The SFC will consider other jurisdictions 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 Committee on Unit Trusts and Mutual Funds (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 (usually by at least one month).

In the case of each new management company, the following information will need to be submitted to the SFC:

- the most recent audited financial report and the semi-annual reports;
- details of the corporate ownership and management structure;
- details of the number of fund managers and the investment approach;
- CVs of the directors and key operating individuals of the management company;
- a summary of the internal compliance rules and regulations; and
- evidence of the licence held from the home regulator.

It is worth noting that the acceptability of each management company will be assessed on certain criteria including:

- the key personnel of the management company or those of the investment manager / adviser (where the latter has been delegated the investment management function by the management company) are expected to possess at least 5 years investment experience managing unit trusts or other public funds with reputable institutions. The expertise gained should be for the same type of investments as those proposed for funds seeking SFC authorisation; and
- sufficient human and technical resources must be at the disposal of the management company, which should not rely on a single individual's expertise.

As mentioned above, it will be necessary to submit detailed CVs of the directors of each management company to the SFC detailing their education, professional experience and employment history, including sufficient evidence of 5 years experience in managing retail authorised funds.

2. The SFC will also need to approve the custodian / trustee of the fund if it has not previously been approved to provide such services to authorised funds in Hong Kong. Most of the custodians/trustees operating in Ireland will 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 registered as a securities dealer with the SFC.
4. It will also be necessary to prepare Hong Kong specific documentation for the fund, as more fully described under "Documentation" below.

Once the fund is authorised in Hong Kong, it will be subject to a number of ongoing reporting and other requirements in relation to its Hong Kong activities. These are set out in more detail in Chapters 10 and 11 of the Code.

Documentation

As mentioned above, the fund's offering and constitutive documentation will be required to comply with the Code. Depending on the structure of the fund, the constitutive documents may include the memorandum and articles of association or the trust deed and the relevant service agreements (such as management agreement, investment management agreement, investment advisory agreement, administration agreement, custodian agreement, etc). For a fund investing in financial derivative instruments, a risk management and control process in compliance with the SFC's requirements will also be required to be submitted to the SFC.

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

A Hong Kong Representative Agreement will also need to be prepared.

The prospectus will be required to comply with the Code and it will also be necessary to prepare a Chinese translation of the offering document. There are a number of options available in satisfying this requirement. Firstly, the existing prospectus can be supplemented by a Hong Kong Covering Document (for use solely in Hong Kong), which would contain specific additional information required in order to comply with the Code. Thereafter both the prospectus and the Hong Kong Covering Document can be translated into Chinese. Alternatively, a Hong Kong specific bilingual offering document can be prepared for distribution solely in Hong Kong. Such document would be drafted on the basis of the existing prospectus but with appropriate amendments required in order to comply with the Code. If this second option is utilised, the 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.

Time Frame for Authorisation

The timetable for obtaining SFC authorisation will, to a large extent, depend on whether the management company has previously been approved by the SFC to manage SFC authorised funds. Where new management companies are involved, the timetable for completing all issues in connection with the authorisation of the Fund can take at least 16 weeks from submission of a complete application. The time involved in gathering the relevant information varies greatly depending on the response times of the managers. Typically a fund will take approximately six weeks to be authorised by the SFC.

Fees and Expenses

The SFC's fees normally comprise of the following:

Application Fee

For the Umbrella Fund - HKD 40,000

For each Sub-Fund - HKD 5,000

Authorisation Fee

For the Umbrella Fund - HKD 20,000

For each Sub-Fund - HKD 2,500

Annual Fee

For the Umbrella Fund - HKD 7,500

For each Sub-Fund - HKD 4,500

Please note that the SFC's application fee is not refundable in the event that the fund fails to obtain authorisation. The authorisation and the first annual fees are payable upon SFC authorisation being granted.

Upon authorisation, 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 licence to do so, (ii) the content of any such advertisement is in compliance with the advertising guidelines of the SFC and (iii) each advertisement of the fund will be kept for record for a three-year period.

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 / registered with 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 and registration or filing of a fund's offering documents is not required when a Corporate Fund is offered:

- to an unlimited number of "professional investors" ;
- to no more than 50 people; or
- with a minimum investment of not less than HKD500,000 (approximately USD65,000).

"Professional investors", as defined in the Securities and Futures Ordinance, include various institutional investors; trust corporations with at least HKD40 million in assets; and individuals, corporations and partnerships with investment portfolios of at least HKD8 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 and registration or filing of a fund's offering documents is not required when a Non-Corporate Fund is offered:

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

It is possible to combine the above.

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

The principal securities requirements that apply to the offer of interests in Non-Corporate Funds are contained in the Securities and Futures Ordinance ("SFO"). For Corporate Funds, they are contained in the SFO and the Companies Ordinance ("CO").

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
- to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorised by the SFC.

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

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

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

Prohibition on Cold Calling

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

Prohibition on Promotion by Unlicensed Intermediaries

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

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

Exemptions

Exemption from Prohibition on Offering Unauthorised Investments

There are a limited number of situations in which an information memorandum or other document which contains an invitation to subscribe for interests in a fund which will be made available to potential investors in Hong Kong is not required to comply with the prospectus requirements of the CO or be authorised by the SFC before issue.

The first situation is known as the "professional investor" exception. "Professional investors", as defined in the SFO, include various institutional investors; trust corporations with at least HKD40 million in assets; and individuals, corporations and partnerships with investment portfolios of at least HKD8 million. Documentary proof of the financial holdings is required, such as audited financial statements (or in the case of high net worth individuals, financial statements verified by an accountant), to verify status.

The second situation arises where information is distributed in such a manner that it does not constitute an offer to the public and therefore does not fall within the prohibition contained in the SFO or within the definition of "prospectus" in the CO. This is known as the "private placement" exception. Schedule 17 to the CO sets out some situations where a document used in a private offer by a corporate issuer (e.g. a Corporate Fund) will not constitute a "prospectus", including an offer:

- to not more than 50 persons (the "limited offerees" exception);
- in respect of which the total consideration does not exceed HKD5 million or its equivalent in another currency (the "small offer" exception); and
- in respect of which the minimum subscription per investor is not less than HKD500,000 or its equivalent in another currency (the "minimum subscription" exception).

In each case, the offer document must include a prescribed warning statement in the following form or a form to the like effect:

WA R N I N G

"The contents of this document 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”.

In relation to a Non-Corporate Fund, steps must be taken to ensure that an offer intended as a private offer is not treated as an offer to the public in Hong Kong. An offer to an unlimited number of professional investors, plus not more than 50 offerees (not actual subscribers) who do not qualify as professionals, is exempt. The following are normally understood to be the requirements for a private placement of securities issued by a Non-Corporate Fund:

- each information memorandum issued should be numbered in series and contain on the cover a statement that it is not an offer to the public.
- each information memorandum issued should be individually addressed to each offeree, the subscriptions for interests in the fund should only be accepted from that offeree and the offeree should be requested not to pass on the information memorandum to any other person.
- the offeree should only be able to purchase interests in the fund as principal or on behalf of clients pursuant to a discretionary mandate.
- the minimum subscription per investor should be stated and should be a sizeable amount.
- the transfer of the interests in the fund by the offeree to any person in Hong Kong should preferably be restricted for a minimum period of 6 months following allotment.
- there should be no public advertising at all in Hong Kong in relation to the information memorandum. The issue of promotional material relating to the acquisition of interests in the fund should also be strictly limited to offerees.

Exemption from Prohibition on Cold Calling

Exemptions to this prohibition include calls made to lawyers, professional accountants, licensed persons, money lenders, professional investors or existing clients. In addition, the prohibition does not apply to an agreement to sell or purchase securities of a corporation to or from a person who is already the holder of securities of that corporation

“Existing client” means a person who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is

made, and remains a party to the client contract when the call is made; or for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made.

"Call" means a visit in person or a communication made by any means. "Unsolicited call" means a call made otherwise than at the express invitation of the person called upon. A call does not include a "permissible communication", which is a communication that is not a visit in person, a telephone conversation or any other interactive dialogue where immediate exchange of statements can be made. Therefore, faxes and postal mail are permissible.

Temporary Licences

There is no exemption to the prohibition of carrying on a business of dealing in securities without an appropriate licence. However, an overseas corporation or individual carrying on a business outside Hong Kong, which in Hong Kong constitutes a regulated activity, may apply for a temporary licence to carry on the same business in Hong Kong. This provision may be useful for fund managers intending to make intermittent visits to Hong Kong to undertake marketing activities.

Temporary licences are not available for type 9 regulated activities (asset management), and licence holders are prohibited from holding any client assets in the course of conducting the regulated activities. The approved period of each temporary licence will not exceed 3 months. If an applicant has obtained a temporary licence in the past, the total approved period of the licences cannot exceed 6 months in any period of 24 months.

An applicant for a temporary licence must establish that it has a valid authorisation from an overseas regulator to carry on in the jurisdiction of the overseas regulator any business which it intends to carry on in Hong Kong. A corporate applicant must also establish that the overseas regulator can investigate and take disciplinary action against the applicant in respect of its business activity in Hong Kong. It is required to nominate at least one individual for the approval of the SFC who will supervise its regulated activities in Hong Kong. An individual applicant must be the representative of a licensed principal. If the principal is a corporation, it must belong to the same group of companies as the corporation for which the applicant is authorised to act outside Hong Kong.

In practice it is very difficult for a corporation to obtain a temporary licence. One of the application requirements is that the applicant corporation must have a business registration in Hong Kong, which means that the applicant corporation would need to establish and

register either a branch or a subsidiary company in Hong Kong. Business registration would also trigger Hong Kong profits tax liability for the subsidiary company or branch for any profits it generates in Hong Kong. There is also a requirement for an audit to be conducted by a Hong Kong auditor in respect of the period for which the corporation was licensed.

Accordingly, temporary licensing is only practical where the overseas manager has an associated entity licensed in Hong Kong. Individual representatives can then apply for individual temporary licences as representatives of the associated licensed entity. Such applications are processed relatively quickly.

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

Overview

Irish investment funds may be sold in the PRC by way of public offering or private placement. As a result of the Memorandum of Understanding signed between the Irish Financial Regulator and the China Securities Regulatory Commission (the "CSRC"), public offerings of Irish funds may be made in the PRC through qualified domestic institutional investors ("QDII"). There are no specific PRC regulations governing the offering of offshore fund products in the PRC by way of private placement, nor are there any formulated rules in respect of the "private placement" concept. Accordingly, local legal advice is strongly recommended.

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

Public Offering

An Irish fund can be sold to the public in the PRC through QDII's. There are four types of QDIIs in the PRC which are as follows:

- Commercial Banks ("CB")
- Fund Management Companies and Securities Companies ("FMCS")
- Insurance Companies ("IC")
- Trust Companies ("TC")

Each is subject to different regulations published by different regulatory authorities. Under the current regulations in relation to FMCS, only public funds that are domiciled in and registered with countries which have signed a memorandum of understanding ("MOU") in respect of regulatory cooperation with the CSRC are allowed to be accessed by the public indirectly in the PRC through products launched by FMCS.

The Irish Financial Regulator signed such an MOU with the CSRC in October 2008.

Private Placement

There are no specific PRC regulations governing the direct offering of offshore fund products in the PRC nor are there formulated rules in respect of a “private placement” concept. Although the current PRC Securities Investment Funds Law (the “Funds Law”) provides that funds raised from “specific targets” (i.e. a private placement) shall be governed by regulations, no such regulations have yet been issued to date.

As a point of reference, Article 10 of the PRC Securities Law (“Securities Law”) sets out a definition for “public offering of securities” which covers the following situations:

- offering of securities to non-specific targets;
- offering of securities to more than 200 specific targets cumulatively; and
- other offerings provided by the laws and administrative regulations.

Article 10 also provides that “non-public offering” of securities shall not carry out advertising, open solicitation or disguised publicity campaigns. However, no further explanation is provided in the Securities Law on the concept of “specific targets”. There is no categorisation of a professional or institutional investor under PRC law.

Although the Securities Law suggests a maximum of 200 offerees for a non-public offering, it should be noted that this may be treated as a reference only since no detailed private placement rules, particularly for direct offering of offshore fund products, have yet been enacted.

Given the uncertainty and no formulated rules on private placements, caution should be exercised in order to reduce potential regulatory risks, approaches to potential investors should be conducted on a strictly private basis and contracts for the sale of the funds should be undertaken and concluded outside the PRC to avoid any regulatory disputes. Such suggested practice should be followed regardless of the structures or the investment strategies of each fund and in each case following legal advice.

Permitted Marketing Activities

Investors in the PRC may be approached directly in order to introduce funds. However, care should be taken to ensure that discussion is conducted on a private basis. Representatives are also permitted to deliver marketing materials about specific funds to PRC investors provided that marketing materials about such funds are addressed only to such specific

investors identified by the foreign fund manager.

Under current PRC law, there are no restrictions preventing representatives or employees of a foreign company from approaching potential investors during visits in the PRC in order to introduce their business capabilities. Accordingly, representatives of a foreign fund manager may attend and speak at seminars / conferences in the PRC. However, such presentations should be limited to the foreign fund manager's general capabilities / strategies and non-product specific performance data. Special care should be taken to avoid any expressions that could be seen as providing information relating to a specific fund.

In spite of the permitted activities above, any contracts for the sale of such funds should be undertaken and concluded outside the PRC in order to avoid any regulatory disputes. Furthermore, it is not advisable for the foreign fund manager's representatives to assist investors in completing the subscription forms and redemption forms of the funds. It is also recommended that no offering document of a fund be delivered in person.

NOTE

As there are no formulated rules in respect of a "private placement" concept in the PRC and the rules in respect of "specific targeted investors", perceived to be a similar concept, have not been promulgated, any "distribution" of marketing materials must be scrutinised on a case by case basis to ensure that they do not constitute an offering to the public. There is no prescribed rubric or wording under PRC law, though warning statements should be framed along the lines below:

"No invitation to offer, or offer for, or sale of, the Shares / Units will be made to the public in China (which, for such purposes, does not include the Hong Kong or Macau Special Administrative Regions nor Taiwan) or by any means that would be deemed public under the laws of China. The information relating to the Shares / Units contained in this Placing Memorandum has not been submitted to or approved by the China Securities Regulatory Commission or any other relevant governmental authority in China. The Shares / Units may only be offered or sold to Chinese investors that are authorised to buy and sell securities denominated in foreign exchange. Potential investors resident in China are responsible for obtaining all relevant approvals from the Chinese government authorities, including but not limited to the State Administration of Foreign Exchange, before purchasing the Shares / Units".

KOREA

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.

As the FSCMA only came into effect on 4 February, 2009 no offshore funds offered on a private placement basis have yet been registered under the FSCMA. As such, the exact process for offering an offshore fund by way of private placement is still not clear and there are several issues that would have to be discussed with the Korean regulators before a registration is sought.

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 Irish Financial Regulator 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.

Public Offering and Private Placement

Registration with the Financial Services Commission

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

Registration of a Privately Placed Irish Fund

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

- the investment amount in the fund must be available to the investor directly or indirectly by way of redemption; and
- the discretionary asset manager of the fund must not have been subject to sanctions from its home regulators or the FSC for the past three years. A sanction is defined as: (i) an administrative sanction (or order) at the level of a suspension of business or higher, or (ii) the imposition of a criminal fine or more severe sanction.

The term “Qualified Professional Investors” under the FSCMA includes the Korean government, the Bank of Korea, certain financial institutions and certain pension funds.

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

The FSC has formally announced amendments to the Presidential Decree of the FSCMA (the “PD”) that would ease the current registration criteria (with respect to the two requirements discussed above) for an Irish fund offered on a private placement basis to Qualified Professional Investors. The changes are as follows:

- The fees and expenses to be incurred by investors are to be clearly disclosed in the fund documents (in lieu of the current open ended redemption requirement); and
- The FSC will no longer look to whether any sanction was imposed on the discretionary asset manager in its home jurisdiction. The only ‘no-sanction’ test remaining after the amendments take effect will be limited to whether the offshore manager was subject to any sanction by the FSC.

The above amendments to the FSCMA will become effective once the cabinet of the Korean government passes the PD, which is expected will occur shortly.

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.

Several publicly offered offshore funds have registered (or, in the case of publicly offered funds that registered before the FSCMA took effect in February 2009, re-registered) with the FSC.

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:

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

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

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. Absent 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 within three-four 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, onshore 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). If there is no onshore marketing then there is no requirement to engage such company.

There is no specific definition of onshore 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 onshore 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.

It should be noted that because the FSCMA only came into effect in February 2009, there are several areas of uncertainty that remain to be resolved before any Irish fund may be registered for sale in Korea.

SINGAPORE

Overview

Irish investment funds may be sold in Singapore by way of public offering or private placement. Public offerings must comply with the offering requirements prescribed in the Singapore Securities & Futures Act (the "SFA") while private placements are exempt from these requirements.

As detailed below the prospectus of any Irish domiciled fund being sold in Singapore will be required to comply with certain requirements. It should be noted that the Singapore Prospectus (as defined below) will need to be submitted to the Irish Financial Regulator in advance to ensure that there are no inconsistencies with the Irish prospectus. If any supplement or addendum to the Irish prospectus, specific to Singapore domiciled investors, is also prepared this document will also need to be submitted in advance to the Irish Financial Regulator.

Public Offer and Private Placement

The offer of units in a fund in Singapore is subject to compliance with the offering requirements prescribed in the Singapore Securities & Futures Act (the "SFA").

There are exemptions from these requirements for offers made to persons who meet certain criteria or are made under specific conditions. These include:

- offers for no consideration;
- personal offers, where the total amount raised does not exceed SD 5 million in any 12 month period;
- private placement, where offers are made to not more than 50 investors in any 12 month period;
- offers to 'institutional investors';
- offers of restricted schemes made to 'accredited investors' or other specified persons, or on condition of a minimum investment of SD 200,000 per transaction (the fund would have to be approved by MAS as a restricted recognised scheme and the offer is subject to restrictions, including the use of advertisements and secondary transfers).

Unless specifically exempted:

- no offer of units in a fund may be made in Singapore unless the fund has been recognised by the Monetary Authority of Singapore (the "MAS") under section 287 of the SFA;
- all offers must be made in or accompanied by a prospectus, which complies with prescribed requirements under the SFA and has been lodged with and registered by MAS (the "Singapore Prospectus"); and
- no person shall (i) advertise the offer or intended offer or (ii) publish a statement that directly or indirectly refers to the offer or intended offer, or is reasonably likely to induce people to subscribe for or purchase units, unless the advertisement or publication is compliant with the requirements of the SFA.

As such, the offering requirements in Singapore are three-fold; the recognition of the fund, the registration of the Singapore Prospectus and the compliance with the advertising guidelines.

Recognition of the Fund

The main requirements for obtaining recognition under section 287 of the SFA are as follows:

- The laws and practices of the jurisdiction under which the fund is constituted and regulated affords investors in Singapore protection that is equivalent or better than that provided to them by or under the SFA in the case of comparable Singapore-based funds. An Irish fund will meet this requirement unless it has been granted material exemptions / derogations by the Irish Financial Regulator, or is a fund with novel features, in which case MAS will need to consider the application for recognition on a case-by-case basis.
- The discretionary asset manager of the fund is licensed or regulated in the jurisdiction of its principal place of business and is a fit and proper person in the opinion of MAS.
- There is a representative for the fund who is either an individual in Singapore or a company / foreign company registered under the Singapore Companies Act. The representative is required to perform certain functions prescribed under the SFA in respect of the offer in Singapore. Typically the representative appointed will be an entity related to the discretionary asset manager or a local administrator. The fund itself (in the case of an investment company) or the management company (in the

case of a unit trust) must enter into a Singapore Representative Agreement with the local representative to ensure that the representative is contractually bound to perform the functions prescribed under the SFA.

- MAS has been furnished with the details of the representative. Although not prescribed by the regulations, a copy of the Singapore Representative Agreement is usually provided to MAS as part of the application for recognition.
- The fund, the discretionary asset manager and the management company (if the fund is a unit trust structure), must comply with the SFA and the Code on Collective Investment Schemes issued by MAS.
- The discretionary asset manager, or a related company, should be managing at least SD 500 million of discretionary funds in Singapore. This requirement can be fulfilled by way of a branch or an office in Singapore, where SD 500m worth of assets (which do not necessarily have to be Singaporean securities) are managed by portfolio managers situated in Singapore. The assets may belong to clients in Singapore or elsewhere (including assets of collective investment schemes) providing the discretionary asset management activities in relation to those assets are carried out in Singapore.
- The fund (in the case of an investment company) or the management company (in the case of a unit trust) must furnish such information or record as MAS may require.

Documentation Required for Recognition

The following documents must be submitted to MAS as part of the application for recognition:

- Application Form 2 (MAS prescribed format) together with the relevant application fees – this form must be executed by 2 directors (or 1 director and the company secretary) of the fund or the management company.
- For UCITS funds:
 - The letter of approval or authorisation from the Irish Financial Regulator;
 - A statement from the discretionary asset manager or the fund (or management company in the case of a unit trust structure) as to whether conditions or restrictions in relation to the authorisation of the fund have been imposed by the

- Irish Financial Regulator. If yes, the details of the conditions or restrictions should also be set out;
- If the fund intends to use or invest in financial derivative instruments, the risk management process filed with and approved by the Irish Financial Regulator.

 - The Irish prospectus and (if any) the latest audited financial statements.

 - The fund's constitutional documents.

Note that the documents at the final two bullet points above are not prescribed but are submitted to MAS as a matter of practice.

Registration of the Singapore Prospectus

The Singapore Prospectus to be lodged with MAS for registration is required to comply with the disclosure requirements set out in the Third Schedule to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations.

The Singapore Prospectus may be in the form of a wrapper to the Irish prospectus or as a standalone prospectus (i.e. without incorporating the Irish prospectus).

Documentation Required for Registration of the Singapore Prospectus

The following documents are submitted to MAS in the application for registration of the Singapore Prospectus:

- Application Form 6 (MAS prescribed format) together with the application fees.

- Original Singapore Prospectus executed in accordance with the requirements of the SFA. The Singapore Prospectus should be signed by each director of the fund or each director of the management company (in the case of a unit trust structure).

- An undertaking, from the fund or the management company (in the case of a unit trust structure) that it will not, at any time after the registration of the Singapore Prospectus, and before the expiration of 12 months from the registration date, make any exempt offer of the fund, unless it has complied with relevant notifications to MAS and the affected investors.

Each registered Singapore Prospectus will be valid for a period of 12 months from the date

of registration. No further offers may be made after the expiration of the 12 month period until an updated Singapore Prospectus has been re-lodged and registered with MAS.

If the Singapore Prospectus needs to be updated before its expiration a supplementary prospectus or replacement prospectus may be lodged with MAS for this purpose. Alternatively, the client may consider re-lodging a new Singapore Prospectus for registration.

Additional Considerations

In addition to the documentation set out above, certain documents prepared and executed by the funds Singaporean legal advisors will need to be prepared and lodged with MAS.

All documents submitted to MAS must be in English. There are no requirements for any other translations.

MAS may refuse the recognition of a fund or the registration of a Singapore Prospectus if it considers it to be against the public interest to do so.

No offer of units may be made if the fund has not been formed or does not yet exist. Therefore, although the applications for recognition and registration of an Irish fund may be submitted prior to the fund's authorisation by the Irish Financial Regulator (to start the review time running), MAS will not grant recognition or registration until it is satisfied that the fund has been established in Ireland and authorised by the Irish Financial Regulator.

Marketing in Singapore

The offer by the fund or by its management company (in the case of a unit trust structure) in Singapore could trigger licensing issues but in most cases the fund or management company should be able to rely on an available exemption by ensuring that the offer is made through any one of the following local distributors:

- a holder of a Capital Markets Services licence to deal in securities;
- an exempt person in respect of dealing in securities being units of a collective investment scheme;
- a holder of a financial adviser ("FA") licence under the Singapore Financial Advisers Act, to market collective investment schemes; or
- an exempt FA in respect of the marketing of collective investment schemes.

It should be noted that the activity of 'marketing of collective investment schemes' is a

regulated activity in Singapore and any person carrying on business in such activity must obtain an FA licence or be exempt. The fund or its management company should therefore refrain from carrying out any direct marketing activities in respect of the offer in Singapore.

Advertising and Ongoing Compliance

All advertisements must comply with the SFA advertising guidelines.

No statistical or financial reporting requirements are imposed by the SFA on the Irish fund, and only compliance with the requirements of the Irish Financial Regulator is necessary.

The SFA does not specify when or where the net asset value must be published. However, the Singapore Prospectus should disclose how investors may obtain the buying and selling prices of units / shares and the dealing days to which the prices apply. If the prices are available from certain publications or media in Singapore, the names of such publications or media must be disclosed.

Upon recognition of the fund, either the fund or the management company (in the case of a unit trust structure) must comply with the following:

- Ensure ongoing compliance with the requirements for recognition (as set out under the heading 'Recognition of the CIS' above);
- Notify MAS of any changes to the information provided in the application for recognition;
- Give written notice to MAS of the proposed winding up of the fund at least 7 days before such winding up;
- Where the Irish Financial Regulator imposes or varies any condition or restriction in relation to the authorisation of the fund, MAS should be informed as soon as practicable but no later than 14 days after the imposition or variation;
- Where the funds risk management process is revised, the revised documentation should be submitted to MAS as soon as practicable but no later than 1 month after it has been filed with and approved by the Irish Financial Regulator.

Costs and Timing

The application fees payable to MAS are as follows:

Recognition of each Fund	SD 1,200
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(note that each sub-fund of an umbrella is treated as a separate fund and an application must be made for each sub-fund seeking to be recognised)

Registration of a Fresh Singapore Prospectus SD 1,200

Registration of a Re-Lodged Singapore Prospectus SD 350

(applies to the registration of a Singapore Prospectus in the case of the recognition of new sub-funds, or in the yearly re-lodgement of the Singapore Prospectus)

Lodgement of a Supplementary / Replacement Prospectus SD 1,200

Each Amendment of the Lodged Singapore Prospectus SD 600

(before registration by MAS)

The application fee must be paid when the application is lodged with MAS and is not refundable in the event that the fund fails to obtain recognition or the Singapore Prospectus fails to be registered.

The minimum review period required by MAS (computed from the date of submission of the relevant application) is as follows:

Recognition of Each Fund: 21 days (or up to 45 days for an unusual fund)

Registration of a Fresh Singapore Prospectus or a Re-Lodged Singapore Prospectus with Recognition of New Sub-Funds: 21 days (or up to 28 days as MAS may decide)

Registration of a Re-Lodged Singapore Prospectus without Recognition of New Sub-Funds: 14 days (or up to 28 days as MAS may decide)

The professional fees of Singapore legal advisors are estimated to amount to approximately SD 35,000 for the recognition of an umbrella fund with one sub-fund. This would include the co-ordination of the recognition and registration process with MAS, the preparation of all application forms, the Singapore Prospectus, the Singapore Representative Agreement and all related documentation. For each additional sub-fund the fee would increase by approximately SD 10,000. For annual re-lodgement of the Singapore Prospectus, legal fees should be in the region of SD 8,000 for an umbrella fund with one sub-fund.

TAIWAN

Overview

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

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

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

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

Public Offering

The public offering of a fund in Taiwan is governed by the Rules. The Rules require that the discretionary asset manager of the fund or an entity appointed by such discretionary asset manager (the “Offshore Fund Entity”) undergo 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.

Umbrella type funds have not been recognised under Taiwan law. Accordingly 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.

Taiwan law requires that a master agent submit an application to SITCA on behalf of the Offshore Fund Entity. 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 sales agents (i.e., banks, 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 discretionary asset manager must meet certain qualifications:

Discretionary Asset Manager Qualifications

- The total net assets of the funds under management must exceed USD2 billion. In calculating the total net assets of the funds under management, and whether they exceed the USD2 billion threshold, the FSC takes into account all assets managed by the discretionary asset 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 discretionary asset manager should have been established / incorporated for more than 2 years.
- The discretionary asset manager must not have been subject to any disciplinary actions in the previous two years by the local authority of its home country.

The Offshore Fund's Qualifications

- The fund should have been in existence for more than one year.
- The fund should 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).

- Investment by the fund in the securities market of the People's Republic of China must not exceed the percentage prescribed by the FSC (currently 10% of the net asset value of the fund).
- The percentage of the fund's investment in derivatives must not exceed the percentage prescribed by the FSC. A fund may only take short positions in derivatives for hedging purposes. The fund's short positions in derivatives must not exceed the total market value of the relevant securities held by the fund. The risk exposure of open positions of investments in derivatives must not exceed 40% of the offshore fund's net asset value and open positions can only be taken for efficient portfolio management purposes.
- Taiwanese investors should not hold in excess of a percentage prescribed by the FSC (currently 90% of the net asset value of the fund).
- The fund should not invest on Taiwanese securities beyond a percentage prescribed by the FSC (currently 70% of the net asset value of the fund).
- The fund must not be denominated in New Taiwan Dollars or Renminbi.
- The fund must not invest in gold, commodities, futures and / or real estate.
- Such other requirements as may be prescribed by the FSC.

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 than that in Taiwan.

Agents

The appointment of the master agent needs to be documented in the form of a written

contract which must contain certain required provisions prescribed by the SITCA and approved by the FSC. Among others, examples of key provisions to be included in the master agent agreement are:

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

Master Agent

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

The role and responsibilities of the master agent include:

- preparing a set of prescribed information required for investors (the “Investor’s Brochure”);
- preparing the Chinese translation of the prospectus and other offering documents of the fund;
- acting as the Taiwan process agent for accepting the service of process and documents on behalf of the fund;
- acting as the point of contact between investors and the fund in relation to the offer and exchange of information;
- forwarding to the fund all subscription, redemption and switching requests; and
- assisting in the protection of investors’ interests.

The master agent is also subject 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.

Sales Agents

All distributions of offshore funds in Taiwan must be handled by the master agent itself and / or through the sales agents appointed by the master agent. The master agent will enter into agreements with the sales agents (which must be SICEs, SITEs, securities brokers, banks or trust enterprises) for the distribution of the funds' units / shares. The qualifications that sales agents 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.

The vetting process at the SITCA level will take from 10 to 25 business days, depending on the number of funds submitted for registration under one single application. It will take 10 business days for SITCA to review the application if there are not more than 3 funds. For an application with 4 to 6, 7 to 10, 11 to 15 or more than 15 funds, it will take, 13, 16, 20 and 25 business days, respectively, for SITCA to review the application.

The fee charged by SITCA ranges from NTD 7,000 to NTD 20,000, which also depending on the number of funds under one application. It normally takes 2 to 3 months for the FSC to review and approve the application.

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

- Documents evidencing compliance with the qualification requirements for the master agent;
- The master agent agreement executed by the Offshore Fund Entity and the master agent;
- A training plan and an internal control system setting forth procedure for know your customers, distribution behaviour and other particulars as required by law;
- Document evidencing the posting of the operation assurance bond by the master agent;

- A letter of undertaking stating that each sales agent meets the relevant qualification requirements, together with the relevant sales agent agreements;
- A document evidencing approval for public offering of the fund in Ireland;
- A list of the funds under such application;
- The most recent annual financial report of the fund and a Chinese language summary of such report, investment portfolio holdings, the prospectus and its Chinese translation;
- Documents evidencing compliance with the qualifications for the fund's discretionary asset manager;
- A letter of undertaking issued by the fund's discretionary asset manager agreeing to provide documents related to purchase, redemption and switching of the funds in question, and information related to investors rights for FSC's review upon request;
- A letter of undertaking issued by the fund's discretionary asset manager confirming its compliance with the thresholds limits prescribed in items 4, 6 and 7 listed under the Offshore Funds Qualifications above;
- The most recent financial reports of the fund's discretionary asset manager;
- A document evidencing the credit rating of the custodian of the fund;
- A document evidencing the master agent's membership in SITCA; and
- Other documents, as required by the FSC.

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

- authentication by the representative office of the ROC in the place where the party issuing the document is situated;
- certification by a local court or government agency in the place where the party issuing the document is located; or

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

Marketing

When a master agent or its appointed sales agent 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 sales agent 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 attack competitors;
- Carry out advertisements, road shows, or other promotional activities for a fund that is not yet approved by the FSC;
- Use profits as a way of advertisement while failing to disclose the risks involved; or
- Conduct any other activities that would have a negative impact on investors' rights.

In the event that a sales agent appointed by a master agent conducts any prohibited marketing activities, the master agent and sales agent 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 sales agent, one shall state the following warning language in notable form:

- Print advertisements must include the following wording: *"This offshore fund has been approved by the FSC for domestic offering and sale. There is no guarantee that it is free of risk. The past performance of a fund manager does not guarantee a minimum investment return. Investors should read through the prospectus before purchasing"*.
- In the event of advertising through broadcasting, television, movies or other similar means using images or sound, one shall disclose the following content: *"Investing in funds is not risk-free. The past performance of a fund manager does not warrant a minimum investment return. Investors should read through the prospectus carefully before purchasing"*.

Use of Fund Performance in Advertising Materials

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

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

Maintenance of Marketing Materials

In addition, the master agent must report the advertising materials, road shows and other promotional activities to SITCA within ten (10) days after the occurrence of the

aforementioned activities. The promotional information, advertising materials, and any other information in connection with advertisements, road shows and other promotional activities must be kept for two (2) years.

Private Placement

Legal Framework and Qualifications

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

Neither the SITC Law nor the Rules state what qualifications a fund must meet in order to be offered via a private placement in Taiwan. However, the FSC has indicated that funds which have a “substantial bearing” on securities related to the People’s Republic of China would not be acceptable. The FSC may in the future prescribe the qualifications of a fund for private placement in Taiwan. As neither the SITC Law nor the Rules state what qualifications a fund must meet in order to be offered via private placement in Taiwan, all funds, other than those having a “substantial bearing” on securities related to the People's Republic of China', may be offered via private placement in the Taiwan for the time being.

Qualified Offerees

The private placement of a 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 (“Group 1”), and (ii) such natural persons, legal persons or funds that meet conditions to be prescribed by the FSC, not exceeding 35 in number (“Group 2”).

"Natural person", as referred to in Group 2, means (i) an individual who has net assets exceeding NTD 10 million in value or an individual whose net assets when combined with those of his/her spouse exceeds NTD 15 million in value; or (ii) an individual whose income during the past 2 years exceeded NTD 1.5 million per annum or whose income during the past 2 years, when combined with his/her spouse’s income during the past 2 years, exceeded NTD 2 million.

“Legal person or fund”, as referred to in Group 2, means a legal person or fund whose total assets exceed NTD 50 million in value or a trust created pursuant to a trust deed and holding assets in excess of NTD 50 million in value. The Offshore Fund Entity is obligated to

conduct due diligence on the potential investors and obtain sufficient evidence from the investors in order to certify to the FSC that such investors are qualified investors.

Disclosure of Information to Prospective Investors

The Offshore Fund Entity (or a “Local Agent” as defined below) shall, upon the reasonable request of an investor who falls within Group 2 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.

Two Ways of Conducting the Private Placement

There are two ways to conduct a private placement of a fund in Taiwan. The first way is for the Offshore Fund Entity to conduct the private placement by itself. Alternatively, the Offshore Fund Entity may engage a local bank, a trust company, a securities firm, a SITE or a SICE as its agent for the purpose of conducting the private placement (each, a “Local Agent”).

Appointment of Litigious / Non-Litigious Agent and Tax Agent

Whether it is the Offshore Fund Entity or the Local Agent that conducts the private placement, it must appoint: (1) an agent for litigious and non-litigious matters, and (2) a tax agent. Both the litigious / non-litigious agent and the tax agent must be Taiwan residents and

can be the same person.

Filings

There are two types of reports that must be filed with the authority: (1) the first filing; and (2) the report on variations. When either one of these filings is made a cover sheet should be attached to the filing indicating the following information:

- name of the discretionary asset manager of the fund
- name of the fund
- date on which the payment of subscription prices was made
- name of the Local Agent engaged by the fund for handling the private placement (if applicable)
- name of agent for litigious and non-litigious matters
- name of the tax agent
- number of subscribers to the offshore fund under Group 1 and the total amount of their subscriptions in foreign currency
- number of subscribers to the offshore fund under Group 2 and the total amount of their subscriptions in foreign currency.

The First Filing

The first filing must indicate the following information:

- Basic information of the fund including the name of the discretionary asset manager, the place of domicile of the discretionary asset manager, the name of the custodian, the name of the fund, the place of domicile of the fund, the type of fund, the date on which the fund was launched, the currency for valuation, the size of the fund, the investment objectives and strategy of the fund, amounts or basis for calculation of fees and charges to be borne by the investors, whether performance fee will be charged, basis for calculation of subscription and redemption price and frequency for handling subscription and redemption (e.g., daily, weekly), minimum amount of subscription, minimum units / shares to be held, etc.
- If the fund is to appoint a Local Agent, copy of the letter issued by the Central Bank approving the Local Agent to be engaged by the fund for private placement in Taiwan [Note: Whether such letter will be issued by the Central Bank is discretionary].

- Private placement memorandum or its equivalent document.
- A declaration by the Offshore Fund Entity or the Local Agent (as the case may be) to the effect that all investors meet the qualifications for Group 1 or Group 2.

The Variations Report

The Variations Report is a report which informs the Taiwanese authority of any changes in the composition of Taiwanese investors in the fund. In particular, the report on variations must indicate the following information:

- Monthly report on variation of the number of investors under Groups 1 and 2 and their respective total amount of investment between the date of first filing and the date of relevant monthly report; and
- A declaration by the Offshore Fund Entity or the Local Agent (as the case may be) to the effect that all subscribers meet the qualifications under Group 1 or Group 2.

Other Filing Considerations

According to the Rules, the first filing must be made to SITCA with a copy to the Central Bank within five (5) days after the investment amount for privately placed offshore fund is paid by the investors.

Any changes in the investors and / or their investment amount after the initial closing date (including, for example, investment in the fund by additional investors) should be documented in the Variations Report which must be filed with the authority on or before the 5th day of the month immediately following the month in which a variation took place. If no variation took place during a month, then there is no need to file a Variations Report. It has been noted that the existence of the Variations Report suggests that a continuous private placement is permissible, provided that the number of investors does not exceed the prescribed limit of 35 in the case of Group 2 investors.

If the Offshore Fund Entity conducts the private placement by itself, either the tax agent or the litigious / non-litigious agent must make the above-noted filings to the relevant authorities. If a Local Agent conducts the private placement it is the Local Agent who must make the filings to the relevant authorities.

Restrictions on Transfer of Fund Units / Shares

The person who acquires units or shares in a fund (the “Seller”) via private placement must not transfer or sell such units or shares to Taiwan persons except in any one of the following situations:

- where the Seller applies to the Offshore Fund Entity (or an authorised entity) for redemption of the units / shares;
- where the Seller is transferring such units / shares to an entity that falls within Group 1;
- where the transfer is based on the application of law (e.g. the transfer of units / shares by virtue of inheritance); or
- where the transfer is otherwise approved by the competent authority.

The certificates representing units / shares in the fund which are purchased via private placement shall indicate conspicuously that the transfer of such units / shares is restricted. Similarly, all documentation provided to the potential investors in relation to the units / shares in a fund shall also indicate that the transfer of such units / shares is restricted.

AUSTRALIA

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 (i.e. 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 Irish Financial Regulator in advance to ensure that there are no inconsistencies with the Irish prospectus. If any supplement or addendum to the Irish prospectus, specific to Australian domiciled investors, is also prepared this document will also need to be submitted in advance to the Irish Financial Regulator.

Public Offering

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

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

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

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

- whether the fund should be registered as an MIS;

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

Registration of an MIS

Requirement to Register as an MIS

Registration of an MIS with ASIC is dependant 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 is to be offered to 'retail' clients then it must be registered as an MIS with ASIC. If a fund is to be offered to 'wholesale' (i.e. 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 possible to offer an Irish fund structured as a corporate vehicle to 'retail' clients in Australia).

Registration Process

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

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

A fee of AUD 2,010 is payable upon lodging the application with ASIC.

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

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

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

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

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

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 (i.e. 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).

Private Placement

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

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

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

AFS Licences

Requirement to Hold an AFS Licence

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

unless an exemption applies.

A 'financial service' includes:

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

Broadly speaking:

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

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

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

ASIC has provided specific exemptions from the AFS licensing requirement under various class orders for certain foreign financial service providers that are registered with the UK FSA, Singaporean MAS, US SEC, Hong Kong SFC and German BaFin. The class orders allow financial services to be provided by an exempted entity (and its employees and other representatives) in Australia provided such services are only provided to 'wholesale' clients. Under these class orders, a foreign financial service provider may engage in advising and dealing without the requirement to hold an AFS licence. There is no exemption for financial service providers regulated by the Irish Financial Regulator.

Depending on the degree and extent of the activities an exempted entity proposes to undertake in Australia by relying on a class order, it may need to register as a foreign company in Australia.

Obtaining an AFS Licence

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

- is competent to carry on the kind of financial services business it is applying for;
- has sufficient financial resources to carry on the business it is proposing; and

- can meet the obligations under the Corporations Act and ASIC policy as a licensee if granted an AFS licence.

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

There is also a fee payable to ASIC upon lodgement of an application for an AFS licence. The fee is AUD 270 if the application is prepared and lodged electronically. However, the fee is AUD 540 if a paper application is made.

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