

# Ireland

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## RETAIL FUNDS

### 1. Please give a brief overview of the retail funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?)

#### Open-ended retail funds

Irish open-ended retail funds can either be established as undertakings for collective investment in transferable securities (UCITS) funds or as non-UCITS funds.

As of November 2009, total assets of Irish domiciled UCITS funds amounted to approximately EUR573 billion (about US\$823 billion) (comprising about 3,205 funds including sub-funds).

#### Closed-ended retail funds

Closed-ended retail funds must be established as non-UCITS funds.

As of November 2009, total assets of Irish non-UCITS funds (including closed-ended retail funds) amounted to approximately EUR138 billion (about US\$198 billion) (comprising about 1,903 funds including sub-funds).

### 2. What are the key statutes, regulations and rules that govern retail funds in your jurisdiction? What regulatory bodies are involved in regulating retail funds?

#### Open-ended retail funds

**Legislation.** The key legislation for UCITS and non-UCITS funds is:

- **UCITS.** The current legislative basis for UCITS funds in Ireland is the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations (S.I. No. 211/2003) (as amended) (2003 UCITS Regulations).

Adopted in June 2009, the most recent piece of European legislation is Directive 2009/65/EC (UCITS IV). The UCITS IV Directive must be transposed into Irish law by 1 July 2011.

- **Non-UCITS.** The legislative basis for non-UCITS funds in Ireland is found in:
  - Part XIII of the Companies Act 1990;
  - The Units Trusts Act 1990;
  - The Investment Limited Partnership Act 1994; and

- The Investment Funds, Companies and Miscellaneous Provisions Act 2005.

In addition to these laws, further clarification is provided by the UCITS and non-UCITS Notices issued by the Irish Financial Services Regulatory Authority (Financial Regulator) and a series of Guidance Notes issued by the Financial Regulator.

**Regulatory bodies.** The Financial Regulator is responsible for the authorisation and ongoing supervision of funds in Ireland.

Where a fund has listed one or more of its share classes on the Irish Stock Exchange, the Irish Stock Exchange supervises compliance with the listing rules and continuing obligations for investment funds.

#### Closed-ended retail funds

Closed-ended retail funds are authorised by the Financial Regulator as non-UCITS funds under the applicable legislation (*see above, Open-ended retail funds: Non-UCITS*).

Closed-ended funds may also be required to issue a prospectus under the Prospectus Directive (2003/71/EC) Regulations 2005 (Prospectus Directive Regulations 2005), which must be approved in advance by the Financial Regulator (acting through its delegate, the Irish Stock Exchange).

### 3. Do the retail funds themselves have to be authorised or licensed? If so, what are the main steps involved?

#### Open-ended retail funds

The authorisation process for retail funds has two parts:

- **Approval of promoter and service providers.** To establish a fund in Ireland, the Financial Regulator must be satisfied with the experience, expertise, regulatory status, capital, reputation and resources of the promoter and the investment manager(s) of the fund (if different). The Financial Regulator regards the promoter as being the driving force behind the fund. Promoters must be of good repute and should have a significant level of financial resources and a demonstrable and relevant track record in the promotion of funds. If the applicant holds an authorisation under the Investment Services Directive (93/22/EEC), this should speed up the approval process.

In addition to the promoter and investment manager, the principal service providers to an Irish retail fund are the administrator and the trustee or custodian, each of which must be authorised by the Financial Regulator (*see Question 7,*

*Open-ended retail funds*). Certain retail funds will also have a management company, which must be approved by the Financial Regulator.

- **Approval of retail fund product.** The retail fund itself must also be authorised. The documentation required will vary depending on the structure of the retail fund (whether it is a UCITS or non-UCITS) and whether it is established as a variable capital investment company, a unit trust or common contractual fund (CCF) (see *Question 8, Open-ended retail funds*).

The following documents are required to be submitted to the Financial Regulator for review in advance of an application for authorisation of an Irish retail fund:

- Financial Regulator application form for authorisation of retail fund.
- Draft prospectus.
- Draft custodian agreement/trust deed or deed of constitution.
- Individual questionnaires for each of the proposed directors of the fund.
- Draft risk management process in relation to the use of derivatives (where appropriate).
- Draft business plan (in the case of a UCITS).
- Confirmation letters from the custodian or trustee.
- Application letter.

The Financial Regulator does not have to review the fund's material contracts (and simplified prospectus, in the case of a UCITS) in advance. Instead, the Financial Regulator relies on various confirmations provided by the legal advisers and service providers to the fund.

The Financial Regulator generally issues a letter of authorisation within four to six weeks of the initial filing date.

#### **Closed-ended retail funds**

Closed-ended retail funds are authorised in the same manner as open-ended funds (see above, *Open-ended retail funds*).

Closed-ended funds may also be required to issue a prospectus under the Prospectus Directive Regulations 2005.

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#### **4. Who can market retail funds?**

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##### **Open-ended retail funds**

The following services are regulated by the Financial Regulator under the European Communities (Markets in Financial Instruments) Regulations 2007 (MiFID):

- Receiving and transmitting orders.
- Executing orders.
- Providing investment advice.

If an entity engages on a professional basis in Ireland in marketing activities which involve the above services, then authorisation under MiFID is required.

##### **Closed-ended retail funds**

See above, *Open-ended retail funds*.

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#### **5. To whom can retail funds be marketed?**

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##### **Open-ended retail funds**

**UCITS.** Retail funds structured as UCITS can be sold throughout the EU under the UCITS passport regime, subject to compliance with certain notification requirements in each jurisdiction in which the UCITS intends to market its shares. It is proposed that the passport regime for UCITS will be simplified under UCITS IV. Irish UCITS are also marketed in other non-EU countries and throughout Asia, subject to compliance with local offering rules.

**Non-UCITS.** Non-UCITS retail funds can be sold subject to compliance with local offering rules in the relevant jurisdiction where the shares are to be sold by public offering or private placement.

There are no minimum subscription requirements or other qualification criteria applicable to Irish retail funds (with the exception of non-UCITS retail venture capital funds, where a minimum subscription amount of EUR12,500 (about US\$17,960) applies).

##### **Closed-ended retail funds**

See above, *Open-ended retail funds: Non-UCITS*.

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#### **6. What are the key requirements that apply to managers/operators of retail funds?**

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##### **Open-ended retail funds**

UCITS structured as unit trusts must have a UCITS management company. UCITS established as investment companies have the option as to whether or not to appoint a management company. UCITS that do not appoint a management company are known as "self-managed investment companies". However, self-managed investment companies must comply with many of the authorisation requirements applicable to UCITS management companies.

There are certain minimum capital requirements that apply to a UCITS management company, which are less onerous for self-managed investment companies. Further, a UCITS management company cannot be without substance, must be managed by at least two persons and perform certain key management functions.

Non-UCITS managers are not subject to specific legislative provisions regarding licensing or authorisation. However, the Financial Regulator must be satisfied as to the suitability of its directors, shareholders and share capital.

##### **Closed-ended retail funds**

The same rules apply in relation to non-UCITS managers (see above, *Open-ended retail funds*).

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## 7. Who holds the portfolio of assets? What regulations are in place for its protection?

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### Open-ended retail funds

A retail fund structured as an investment company, investment limited partnership (ILP) or CCF must appoint a custodian to hold its assets (see *Question 8, Open-ended retail funds*). In the case of a unit trust, the assets are held by the trustee of the unit trust.

The custodian or trustee must be authorised by the Financial Regulator to provide custodial services (that is, as a licensed bank or as a custodian under MiFID).

The custodian or trustee of an Irish retail fund has a dual role, to:

- Oversee the manner in which the fund is managed.
- Safe-keep the assets of the fund.

In each case, it must act in accordance with the requirements set down by the Financial Regulator in the UCITS and non-UCITS series of Notices.

### Closed-ended retail funds

See above, *Open-ended retail funds*.

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## 8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures? What are the participants' interests in the fund called (for example, share or unit)?

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### Open-ended retail funds

The legal vehicles that can be used to set up a retail fund are as follows:

- Investment company incorporated with variable capital (fixed capital investment companies are also available but rarely used).
- Unit trust.
- CCF.
- ILP.

The participant acquires shares in the case of an investment company, units in the case of a unit trust and partnership interests in the case of an ILP. Participants in a CCF hold their participation as co-owners and each participant holds an undivided co-ownership interest as "tenants in common" with other participants.

Whichever legal structure is chosen, retail funds can be established either as single stand-alone funds or as umbrella funds (with segregated liability between sub-funds). They can offer different unit or share classes within a fund, the normal differentiating factors being:

- Target investors.
- Minimum subscription or holding requirements.
- Dividend policy.

- Designated currency.
- Fees.

In February 2010, the Financial Regulator clarified the circumstances in which financial derivatives can be used at class level, to include providing different levels of participation in the performance of the underlying portfolio or different levels of capital protection for investors.

The choice of legal structure will usually depend on a number of issues, including:

- Investor familiarity.
- Investor capacity to invest.
- The additional costs (including regulatory capital requirements) associated with setting up an Irish management company (required for unit trusts and CCFs but not for investment companies).
- Operational flexibility (there is no requirement to hold an annual general meeting for unit trusts and it is easier to amend the constitutional documentation of a unit trust for non-material issues).

### Closed-ended retail funds

See above, *Open-ended retail funds*.

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## 9. Describe the investment and borrowing restrictions to which retail funds are subject.

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### Open-ended retail funds

UCITS. The following rules apply:

- **Permitted investments.** Investments of a UCITS are confined to:
  - transferable securities and money market instruments which are listed on a stock exchange or other regulated market;
  - recently issued transferable securities which will be admitted to official listing on a stock exchange or other regulated market within a year;
  - money market instruments, as defined in the UCITS Notices, other than those dealt on a regulated market;
  - units of UCITS;
  - units of non-UCITS as set out in the Financial Regulator's Guidance Note 2/03;
  - deposits with credit institutions as prescribed in the UCITS Notices;
  - financial derivative instruments as prescribed in the UCITS Notices.
- **Investment restrictions.** The following investment restrictions apply to UCITS:
  - a UCITS cannot invest more than 10% of net assets in transferable securities and money market instruments other than those referred to above (see above, *Permitted investments*);

- a UCITS cannot invest more than 10% of net assets in recently issued transferable securities which will be admitted to official listing on a stock exchange or other market within a year;
  - a UCITS cannot invest more than 10% of net assets in transferable securities or money market instruments issued by the same body provided that the total value of transferable securities and money market instruments held in the issuing bodies in each of which it invests more than 5% must be less than 40%. This limit of 10% is raised to 35% if the transferable securities or money market instruments are issued or guaranteed by a member state or its local authorities, or by a non-member state or public international body of which one or more member states are members;
  - a UCITS cannot invest more than 20% of net assets in deposits made with the same credit institution. Deposits with certain institutions, held as ancillary liquidity, must not exceed 10% of net assets. This limit can be raised to 20% in the case of deposits made with the trustee or custodian;
  - the risk exposure of a UCITS to a counterparty to an OTC derivative cannot exceed 5% of net assets. This limit is raised to 10% if the counterparty is a certain type of credit institution;
  - a combination of two or more of the following issued by, or made or undertaken with, the same body cannot exceed 20% of net assets:
    - investments in transferable securities or money market instruments;
    - deposits; and/or
    - risk exposures arising from OTC derivatives transactions.
  - a UCITS fund can invest 100% of its net assets in transferable securities and money market instruments issued or guaranteed by:
    - an EU member state, its local authorities or agencies;
    - an Organisation for Economic Co-operation and Development (OECD) member state; or
    - public international bodies of which one or more EU member states are members.
  - a UCITS cannot invest more than 20% of net assets in any one collective investment scheme (CIS). Investment in non-UCITS cannot, in aggregate, exceed 30% of net assets. Investment in a CIS, which can itself invest more than 10% of net assets in other schemes, is not permitted;
  - a UCITS can invest up to 20% of net assets in shares and/or debt securities issued by the same body where the investment policy of the fund is to replicate an index which satisfies the criteria set out in the UCITS Notices and is recognised by the Financial Regulator. This 20% limit can be raised to 35%, and applied to a single issuer, where this is justified by exceptional market conditions;
  - an investment company, or a management company acting in connection with all of the CIS it manages, cannot acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body;
  - UCITS are generally restricted from acquiring more than:
    - 10% of the non-voting shares of any single issuing body;
    - 10% of the debt securities of any single issuing body;
    - 25% of the units of any single CIS;
    - 10% of the money market instruments of any single issuing body.
  - a UCITS cannot carry out uncovered sales of:
    - transferable securities;
    - money market instruments;
    - units of CIS; or
    - financial derivative instruments.
  - a UCITS's global exposure (as prescribed in the UCITS Notices) relating to derivatives must not exceed its total net asset value;
  - a UCITS can borrow up to 10% of its net asset value provided such borrowing is on a temporary basis. A UCITS can charge its assets as security for such borrowings.
- Non-UCITS.** Non-UCITS retail funds are subject to similar investment restrictions to those described for UCITS. However, a non-UCITS retail fund can borrow up to 25% of its net assets (instead of 10%). Non-UCITS retail funds can also invest in certain asset classes that are not eligible investments for UCITS funds, for example, property funds, venture capital funds or retail funds of hedge funds.
- Closed-ended retail funds**  
See above, *Open-ended retail funds: Non-UCITS.*
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- 10. Can the manager/operator place any restrictions on the issue and redemption of interests in retail funds?**
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- Open-ended retail funds**  
A manager or the board of directors of a retail fund generally have discretion to reject subscriptions from any investor without providing reasons. Restrictions on the issue of interests in retail funds can also be placed by imposing a minimum subscription requirement, although there is no regulatory minimum subscription applicable to retail funds in Ireland.
- A UCITS must provide redemption facilities at least once every two weeks. A non-UCITS retail fund must provide redemption facilities at least once a month. A retail fund, whether UCITS or non-UCITS, can limit redemptions on any dealing day to 10% of the fund's net assets.

**Closed-ended retail funds**

Closed-ended funds are subject to the same provisions in relation to subscriptions as open-ended funds (see above, *Open-ended retail funds*).

Closed-ended funds by their nature do not generally provide any redemption facilities during the term of the fund.

**11. Describe any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties.****Open-ended retail funds**

Retail funds are not required to provide investors with any right to transfer or assign their units to third parties, except for funds listed on the Irish Stock Exchange.

The right of an investor in an open-ended retail fund to transfer or assign its interest to third parties (if any) will be set out in the fund's offering document. Transfers will not be registered until a share or unit transfer form is filed with the fund.

Shares or units listed on the Irish Stock Exchange must be freely transferable except where, in the opinion of the fund or manager, the transfer would either:

- Be unlawful.
- Result or be likely to result in any:
  - adverse regulatory, legal, pecuniary or tax consequences; or
  - material administrative disadvantage for the fund or unitholders as a whole.

**Closed-ended retail funds**

See above, *Open-ended retail funds*.

**12. Describe the periodic reporting requirements to:**

- **Investors.**
- **Regulators.**

**Open-ended retail funds**

- **Investors.** Retail funds must publish:
  - an annual audited report for each financial year;
  - an unaudited semi-annual or half-yearly report.

The annual report must be published within four months of the year end and the semi-annual report within two months of the period end. These reports must be offered to investors free of charge before the conclusion of a contract and supplied to investors free of charge on request.

In addition, a retail fund must publish its net asset value each dealing day, either in a newspaper circulated in each jurisdiction where its units are sold or on a disclosed website.

- **Regulators.** The annual and semi-annual reports must be submitted to the Financial Regulator within four and two months, respectively, of the relevant period's end.

The fund must also provide monthly statistics to the Financial Regulator, normally through the Administrator.

**Closed-ended retail funds**

- **Investors.** See above, *Open-ended retail funds*.
- **Regulators.** See above, *Open-ended retail funds*.

**13. Describe the tax treatment for:**

- **Funds.**
- **Resident investors.**
- **Non-resident investors.**

**Open-ended retail funds**

- **Funds.** Irish regulated funds are not subject to tax on any income and/or gains they may realise from their investments. This means that all income earned and all gains arising on assets of the fund can accumulate within an Irish fund free from tax. Gross roll up is the term used to describe the process by which growth and income on the investment can grow without deduction of the tax until the end of the term of investment.

Ireland does not have any tax on the value of the funds' net assets. No stamp duty (subscription tax) is payable in Ireland on the issue, transfer, repurchase, redemption, and so on, of units in a fund.

- **Resident investors.** This depends on whether the investor is exempt or non-exempt:
  - **Exempt investors.** Exempt investors include approved pension schemes, charities, other investment funds, and so on, who have provided the fund with the appropriate declaration. There are no withholding taxes on a distribution of payments by funds to those investors, or on any gain arising on encashment, redemption, cancellation or transfer of units;
  - **Non-exempt investors.** In relation to non-exempt investors that are Irish-resident or ordinarily resident in Ireland, the fund must deduct:
    - 25% tax on distributions (where payments are made annually or at more frequent intervals);
    - 28% tax on any other distribution or gain arising to the investor on an encashment, redemption, and so on of units.

If there is no disposal, the fund must deduct tax at a rate of 28% on any notional gain on the eight-year anniversary of the initial investment (and any subsequent eight-year period thereafter).

Non-exempt investors (depending on their own personal tax position) who are Irish resident or ordinarily resident in Ireland may still be required to pay tax or further tax on a distribution or gain arising on an encashment, redemption, cancellation, transfer or deemed disposal of their units. Alternatively they may be entitled to a refund of all or part of any tax deducted by the fund on a chargeable event.

If an individual investor, or a person connected with the investor, has influence over the assets that are acquired by

a regulated fund, the fund may be regarded as a personal portfolio investment undertaking (PPIU). The PPIU provisions set out a 48% tax rate (applicable from 20 February 2007) on income distributions and disposals, and only apply to regulated funds that qualify for the gross roll up regime (see above, *Funds*). Specific exemptions apply:

- where the property invested in has been widely marketed and made available to the public;
- for non-property investments entered into by the investment undertaking.
- **Non-resident investors.** Regulated funds are not subject to any taxes on their income or gains arising on their underlying investments (see above, *Funds*). In addition, there are no withholding taxes imposed in relation to investors that are neither Irish resident nor ordinarily resident in Ireland once they have provided the fund with the appropriate declaration of non-Irish residence.

#### Closed-ended retail funds

- **Funds.** See above, *Open-ended retail funds*.
- **Investors.** See above, *Open-ended retail funds*.
- **Non-resident investors.** See above, *Open-ended retail funds*.

#### 14. Please summarise any proposals for the reform of retail fund regulation in your jurisdiction.

In June 2009, the EU Council of Ministers adopted UCITS IV, which will consolidate and replace the existing UCITS Directive when it becomes effective. It is required to be transposed into the national law of each EU member state by 1 July 2011. In addition to consolidating the UCITS Directives, UCITS IV also introduces a number of significant amendments including:

- A revised streamlined UCITS passport regime.
- A new merger regime for UCITS.
- A new UCITS master/feeder structure.
- Replacement of the simplified prospectus.
- A new full UCITS management company passport.
- Further co-operation mechanisms between regulators.

Further, the Irish government recently introduced the Companies (Miscellaneous Provisions) Act 2009, which provides for a more efficient system for re-domiciling non-Irish domiciled corporate funds into Ireland. The new system will enable corporate funds established and registered in certain jurisdictions to apply to the:

- Register of Companies in Ireland to continue as a company under the laws of Ireland.
- Financial Regulator to be authorised as a fund in Ireland.

This re-domiciliation regime will enable re-domiciled funds to be authorised in Ireland as either a non-UCITS or UCITS fund provided that they meet the relevant criteria for the chosen fund structure. The new system, which is expected to be in place in early 2010, will result in a number of benefits. For example, the track record of the existing fund can be maintained, with no portfolio realisation occurring, and no asset for share swap or

amalgamation will be required. It will, therefore, be a more efficient system for fund promoters considering re-domiciling their corporate funds in Ireland.

## HEDGE FUNDS

#### 15. Please give a brief overview of the hedge funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?)

Ireland is one of the leading international domiciles for regulated hedge funds and fund of hedge funds (FoHFs). It offers a variety of fund structures with differing levels of investment and borrowing restrictions, investment mechanics, minimum subscription requirements, service provider requirements and authorisation timeframes depending on the proposed portfolio composition and targeted investor profile for a particular project.

In addition to being a leading international domicile for hedge funds, Ireland is also one of the main service locations (including fund administration, audit, legal and consulting services) for hedge funds domiciled outside of Ireland. A significant proportion of about 5,000 non-Irish domiciled funds (including sub-funds) that are administered from Ireland are hedge funds.

As of October 2009, alternative investment funds administered in Ireland comprised approximately EUR689 billion (about US\$989 billion) (accounting for about 41% of such assets administered globally).

#### 16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? What regulatory bodies are involved in regulating hedge funds?

Hedge funds are generally established as non-UCITS funds. However, following the recent financial crisis and the ongoing deliberations around the draft Alternative Investment Fund Managers Directive, UCITS funds are now receiving significant interest from the alternative investment community and investors. Examples of some of the alternative investment strategies being employed within UCITS include:

- Equity long or short funds.
- 130/30 funds.
- Hedge fund or commodities index products.
- Managed futures products.
- Absolute return funds.
- Tactical asset allocation funds.

The legislative basis for hedge funds will depend on whether the fund is structured as a UCITS or non-UCITS fund (see *Question 2*).

The Financial Regulator is the competent authority responsible for the authorisation and ongoing supervision of hedge funds and FoHFs in Ireland. Where a hedge fund has listed one or more share classes, the Irish Stock Exchange supervises compliance with its listing rules for investment funds.

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**17. How are the following areas regulated (if at all) in relation to hedge funds:**

- **Risk.**
  - **Valuation and pricing.**
  - **Systems and controls.**
  - **Insider dealing and market abuse.**
  - **Transparency.**
  - **Money laundering.**
  - **Short selling.**
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- **Risk.** The prospectus or offering document is required to describe in full the risks of investing in the hedge fund. In the case of alternative strategies pursued by UCITS, a risk management statement must be filed with the Financial Regulator, which sets out the manner in which the UCITS will measure and monitor risk.
  - **Valuation and pricing.** The Financial Regulator's Guidance Note 1/00 (updated in August 2008) sets out the permitted valuation methods for all asset classes.
  - **Systems and controls.** The fund must appoint an Irish administrator and a custodian, each of which must be approved in advance by the Financial Regulator. The administrator is responsible for the administration, transfer agency and registrar functions. The custodian is responsible for safe-keeping the assets of the fund and also must oversee the management of the fund.
  - **Insider dealing and market abuse.** Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse Directive) was implemented in Ireland on 1 July 2005 as the Market Abuse (Directive 2003/6/EC) Regulations (Regulations). The Regulations impose significant obligations on all listed issuers (both Irish and overseas) whose securities or instruments are listed on the Irish Stock Exchange. The Regulations strengthened and extended the previous Irish Stock Exchange rules relating to inside information. They also created a new offence of market manipulation.
  - **Transparency.** The fund must generally publish its annual and semi-annual accounts within four and two months, respectively, of each period end, and make its net asset value available to investors (*see Question 12*). The fund's annual report must include a report from the custodian/trustee as to whether the fund has operated in accordance with its prospectus and applicable regulations.
  - **Money laundering.** The fund is subject to the relevant provisions of the Criminal Justice Act 1994 relating to anti-money laundering, which is due to be amended shortly to implement the provisions of Directive 2005/60/EC (Third Anti-Money Laundering Directive). The Financial Regulator has also issued Guidance Notes for financial institutions (excluding credit institutions) that are supervised by the Financial Regulator.
  - **Short selling.** A retail hedge fund cannot carry out sales of transferable securities when those securities are not in the ownership of the scheme.

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**18. Who can market hedge funds?**

The position is the same as for retail funds (*see Question 4*).

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**19. To whom can hedge funds be marketed?**

Irish hedge funds can be set up as:

- Qualifying investor funds (QIFs).
- Professional investor funds (PIFs).
- Retail investor funds.

**QIFs**

There is a minimum initial subscription requirement of EUR250,000 (about US\$360,000). In addition, QIFs can only be sold to qualifying investors, which are either:

- Any natural person with a minimum net worth (which excludes main residence and household goods) in excess of EUR1.25 million (about US\$1.79 million).
- Any institution (an entity other than a natural person):
  - which owns or invests on a discretionary basis at least EUR25 million (about US\$35.9 million) or its equivalent in other currencies; or
  - the beneficial owners of which are qualifying investors in their own right.

There is an exemption from the minimum subscription requirement and qualifying investor criteria. This is the knowledgeable employee exemption, which is available to the fund's managers and a limited number of other persons and entities that are closely connected with the management of the fund.

**PIFs**

There is a minimum subscription requirement of EUR125,000 (about US\$179,570) per investor but no net worth criteria. The knowledgeable employee exemption applies to the minimum subscription requirement (*see above, QIFs*).

**Retail investor funds**

Hedge funds structured as retail funds are not subject to any regulatory minimum subscription or minimum net-worth requirements.

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**20. Who holds the portfolio of assets? What regulations are in place for its protection?**

The custody requirements that apply to retail funds also apply to hedge funds (*see Question 7, Open-ended retail funds*). QIFs and PIFs can also appoint a prime broker (PB) subject to complying with the following regulatory conditions:

- The value of assets passed on an outright basis to the PB by re-hypothecation or otherwise must not, in the case of a PIF, exceed 140% of the fund's indebtedness to the PB. There is no limit in the case of a QIF.

- The arrangement must incorporate a procedure to mark positions to market daily and the PB must agree to return the same or equivalent assets to the fund.
- The PB arrangement must incorporate a legally enforceable right of set-off in favour of the fund.
- Where the PB holds assets of a fund otherwise than as provided above, it must be appointed as a sub-custodian by the custodian/trustee.
- The PB and/or its parent company must be regulated as a broker by a recognised regulatory authority. The PB is also subject to certain minimum shareholder funds and credit rating requirements.

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### 21. Describe the key disclosure or filing requirements (if any) that must be done by the fund (for example, in relation to the prospectus or offering memorandum and side letters).

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In the case of QIFs, there is no prior filing with, or review by, the Financial Regulator. Instead, once the promoter and principal service providers have been approved, there is a fast track self-certification regime, under which certification has to be given by the board of the fund/management company and the Irish legal advisers.

Once those certifications are given, the fund documentation is negotiated between the promoter, the legal advisers and the other service providers, and then executed and filed with the Financial Regulator. The documentation must be filed with the Financial Regulator on the day prior to which authorisation is sought. A “spot check” post authorisation review may then take place.

PIF authorisation is subject to review by the Financial Regulator under the same procedure as for retail funds (*see Question 3, Open-ended retail funds*).

In the limited circumstances where side letters are permitted (that is, where they do not vary significant rights of investors), they do not need to be filed with the Financial Regulator.

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### 22. What are the key requirements that apply to managers/operators of hedge funds?

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As with retail funds, the principal service providers to an Irish hedge fund must be approved in advance (*see Question 3, Open-ended retail funds*). This requirement applies to each of the:

- Promoter.
- Management company (if any).
- Directors.
- Investment manager.
- Irish administrator.
- Custodian.

If a management company is appointed to a hedge fund, the Financial Regulator must be satisfied as to the suitability of its

directors, shareholders and share capital. The investment manager to the fund must be regulated in its home jurisdiction under MiFID or equivalent.

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### 23. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures? What are the participants' interests in the fund called (for example, share or unit)?

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The legal vehicles that can be used to establish a hedge fund are the same as those used for retail funds (*see Question 8*).

The choice of legal structure for a regulated hedge fund will also depend on the following additional factors:

- Portfolio diversification (investment companies are subject to a statutory risk spreading requirement whereas unit trusts are not).
- Borrowing or leverage proposals (investment companies are sometimes favoured as the legal vehicle to enter into such arrangements).
- Reporting requirements (all regulated funds must prepare annual audited accounts and semi-annual unaudited accounts, however, QIF investment companies are no longer required to produce semi-annual unaudited accounts).

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### 24. What are the advantages and disadvantages of using onshore and offshore structures?

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#### Onshore

The advantages of using an onshore structure are:

- A robust regulatory environment and greater transparency.
- The global recognition of Irish fund product.
- The availability of experienced and highly professional service providers.
- A straightforward promoter and investment manager approval regime.
- The wide range of fund types or products available.
- A favourable tax regime for hedge funds and investors.
- The fast track authorisation for QIFs.
- The fact that flexible hedge fund investment strategies can be pursued within the QIF structure.
- The fact that subject to the minimum subscription requirements, an Irish QIF can be sold to the public in Ireland.

#### Offshore

The advantages and disadvantages of using an offshore structure are that:

- Offshore jurisdictions such as the Cayman Islands are traditionally regarded as the “hub” for hedge funds but this is now changing due to investor demand for regulated hedge funds.

- Offshore hedge funds can only be registered for sale to the public in Ireland if they are set up in a jurisdiction which provides an equivalent level of protection to an Irish authorised fund.

## 25. Describe the tax treatment for:

- **Funds.**
- **Resident investors.**
- **Non-resident investors.**

- **Funds.** See *Question 13, Open-ended retail funds: Funds*.
- **Resident investors.** The beneficial tax regime which is available to Irish investors in offshore funds in EU or European Economic Area (EEA) and certain OECD countries only applies to regulated funds. Only offshore funds that are similar in all material respects to domestic gross roll up funds benefit from this favourable tax regime (see *Question 13, Open-ended retail funds: Funds*). This beneficial regime also applies to investors that invested in unregulated EU or EEA and certain OECD offshore funds prior to 20 February 2007, if their interest in those funds would not qualify as a PPIU had the fund been regulated (see *Question 13, Open-ended retail funds: Resident investors*). This regime is distinct from the separate and less advantageous tax regime that applies to offshore funds (both regulated and unregulated) domiciled in non-EU or EEA and certain OECD countries (for example, the Cayman Islands).

The PPIU provisions and the provisions providing for a deemed disposal every eight years (both outlined at *Question 13, Open-ended retail funds: Resident investors*) apply equally to regulated offshore funds domiciled in EU or EEA and certain OECD countries.

Income and gains made by an Irish tax resident corporation are taxed at 12.5% or 25% to 28% (the tax rate depends on whether the payments are made annually or otherwise) depending on whether the units are held as part of a trade.

Individuals that invest in unregulated EU or EEA or certain OECD offshore funds on or after 20 February 2007 are subject to income tax at their marginal rate of tax (that is, 20% or 41%) and capital gains tax at the rate of 25%. Irish tax resident corporations are subject to corporation tax at a rate of 12.5% or 25% on income received from such a fund and gains at 25%.

- **Non-resident investors.** Not applicable.

## 26. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

A hedge fund can be established as one of the following:

- Open-ended (up to quarterly redemptions permitted).
- Limited liquidity (redemptions are permitted on a less frequent than quarterly basis subject to prospectus disclosure).

- Closed-ended (generally, no redemptions during its life).

Hedge funds are not required to provide investors with any right to transfer or assign their units to third parties, except for funds listed on the Irish Stock Exchange (see *Question 11*). In the case of a QIF, transfers will only be permitted if the transferee satisfies the qualifying investor criteria (see *Question 19*).

## 27. Please summarise any proposals for the reform of hedge fund regulation in your jurisdiction.

On 30 April 2009, the European Commission published a proposal for a Directive of the European Parliament and Council (Directive) to establish a harmonised EU framework for the authorisation and operation of the managers of non-UCITS alternative investment schemes regardless of the domicile of the fund, and for the marketing of such funds within the EU. Following lengthy discussions and lack of agreement on the content of the Directive, the most recent version of the proposed Directive is the compromise text from the Spanish Presidency (European Council) issued in early February 2010, which is currently under review by interested parties. Subject to agreement on the text of the Directive, it is expected that the Directive will come into force in 2011.

Further, the Irish government recently introduced the Companies (Miscellaneous Provisions) Act 2009, which provides for a more efficient system for re-domiciling non-Irish domiciled corporate funds into Ireland (see *Question 14*).

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