Investment funds in Ireland
Your bridge to the future

Leading business advisers

Contents

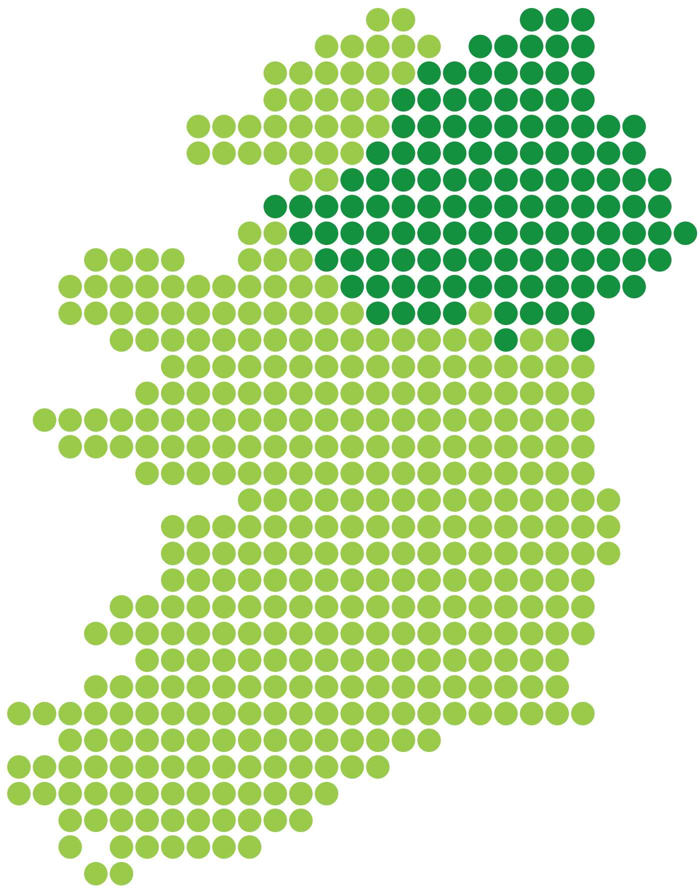
Why Ireland?

A global centre of excellence

With over twenty years' experience in the domiciling and servicing of internationally distributed investment funds, Ireland has become a leading centre of excellence and remains at the cutting edge of market developments. That's why close to 900 fund promoters have chosen Ireland as the location from which to service assets worth over €2 trillion.

As a regulated centre for investment funds in which it is easy to do business, Ireland offers many advantages for international fund promoters.

- **Scale** - 66 world-class fund service providers, over 11,000 employees, over 12,300 funds, over €2 trillion in assets (Source: Central Bank & IFIA, 2012).
- **No. 1 for Hedge Funds** - Ireland is the world's leading centre for the administration of hedge funds, servicing over 40 per cent of global hedge fund assets (Source: HFM Week and IFIA, 2012).
- **Major UCITS Centre** - 80 per cent of Irish domiciled fund assets are held in cross-border UCITS.
- **Global Distribution** - Irish serviced funds are sold in 167 countries worldwide (IFIA, 2012).
- **A Leading ETF and Money Market Fund Domicile** - Irish domiciled funds represent 32% of the European ETF market and 30% of European MMF assets (Source: IFIA & EFAMA, 2012).
- **Regulatory Framework** - Ireland has a robust and efficient regulatory framework for investment funds with a clear process and certain timeframes combined with a wide range of investment structures.
- **Tax Framework** - Ireland offers a highly efficient, clear and certain tax environment for investment funds with a 12.5% corporate tax rate for management companies and no taxes on funds or non-resident investors.
- **Expertise** - Ireland offers unrivalled specialist expertise in fund structuring, domiciling and administration, from 'long only' to highly complex investment strategies.
- **Government Support** - The investment funds industry has always enjoyed full political support since the establishment of the International Financial Services Centre (IFSC) in 1987. Numerous measures have been taken over the years to enhance the competitiveness of Ireland as a fund domicile.



Ireland has the expertise, flexibility, scale and determination to continue to serve the evolving needs of the investment funds industry.

Which fund structure?

Ireland offers a range of fund structures to suit every requirement. The first step is to decide on the regulatory status of the fund (UCITS or Non-UCITS) which will depend on factors such as the investment strategy, investor base (retail or sophisticated) and distribution requirements.

Regulatory status

UCITS

UCITS (Undertakings for Collective Investment in Transferable Securities) are a European retail fund product offering a high level of investor protection. UCITS authorised in one EU member state are granted authorisation for distribution throughout the EU. UCITS are also widely recognised by regulators outside Europe and are distributed in over 70 countries around the world.

UCITS must comply with extensive investment and borrowing restrictions set out in the Central Bank's UCITS Notices which are designed to ensure that these funds are suitable for retail sale.

A UCITS must be an open-ended fund and can be structured as a Unit Trust, a Variable Capital Company (which is a plc) or as a Common Contractual Fund (CCF).

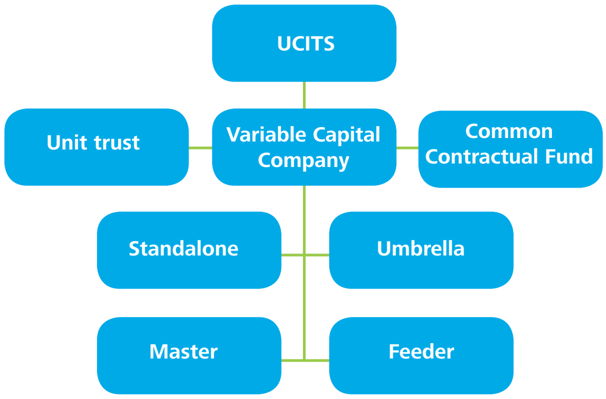
Non-UCITS

Non-UCITS funds can be either open-ended or closed-ended and are governed by the Central Bank Non-UCITS Notices. The Non-UCITS regime is primarily used to establish professional and qualifying investor funds for institutional and sophisticated investors. A number of specialist fund structures are only available as Non-UCITS.

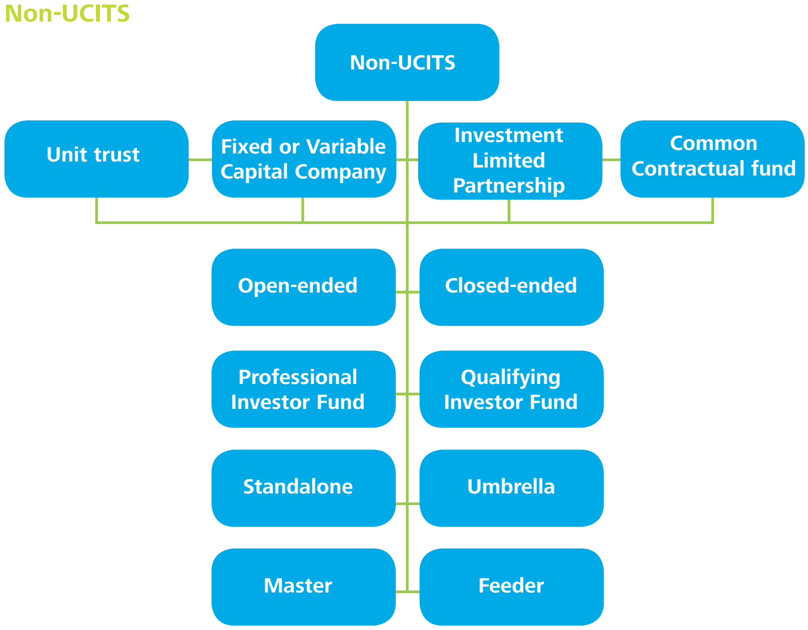
Non-UCITS can be structured as an Investment Company (fixed or variable capital), a Unit Trust, a CCF or an Investment Limited Partnership.

Once the regulatory status has been chosen, further structural choices exist, for example an umbrella or a stand-alone fund; an open-ended or closed-ended fund; and various specialist fund structures which may be utilised.

UCITS



Non-UCITS



Legal structures

Unit Trust

A Unit Trust is constituted by a trust deed between a trustee and a management company (manager). A Unit Trust is not a separate legal entity and therefore the trustee acts as legal owner of the fund's assets on behalf of the investors. UCITS Unit Trusts are governed by the UCITS Regulations, while Non-UCITS Unit Trusts are governed by the Unit Trusts Act, 1990. Where a fund is structured as an umbrella fund, the Unit Trust structure permits segregation of liabilities and the Central Bank will allow the preparation of separate financial statements for the individual sub-funds.

Investment Company

Investment companies are subject to Irish company law, comprising the Companies Acts 1963 to 2009, except where certain sections are specifically disapplied. In particular Non-UCITS companies are subject to Part XIII of the Companies Act 1990. Under the 1990 Act, an investment company must operate with the aim of diversifying investment risk.

A company can be incorporated with limited liability and with segregated liability for each sub-fund. An investment company must include the results for all subfunds of that company in the periodic reports issued by the company.

Investment Limited Partnership

An Investment Limited Partnership may be formed in Ireland pursuant to the Investment Limited Partnership Act 1994. This structure is not allowed for UCITS funds. The Central Bank requires that there must be at least one Irish general partner.

Common Contractual Fund

This fund vehicle was introduced in 2003 to enable pension funds to pool their investments in a tax efficient manner and also to facilitate asset-pooling generally. The CCF is an unincorporated body established by a management company under a contractual deed whereby the investors participate as co-owners of the assets of the fund. The CCF is available to institutional investors only.

The Irish Finance Act 2003 provided that CCFs are tax transparent, in that income and gains are treated as accruing directly to each investor, as if the income or gains had never passed through the fund. This means that double taxation treaty reliefs between the investor's home jurisdiction and the jurisdiction in which the underlying investments are based should be available.

Where a CCF is established as an umbrella fund, the liability of the various sub-funds can be segregated.

The Irish Qualifying Investor Fund (QIF)

The Irish Qualifying Investor Fund is a regulated, specialist investment fund vehicle targeted at sophisticated and institutional investors. With assets exceeding €150 billion the QIF has become the regulated vehicle of choice for alternative investment fund managers.

Advantages of the QIF

- **Investment flexibility** - The Central Bank does not apply the usual investment restrictions and requirements regarding leverage and diversification, making the QIF a highly flexible structure.
- **Speed to market** - The QIF can be authorised in as little as 24 hours provided a completed application is received before 3 pm on the previous day and all parties to the fund are pre-approved.
- **AIFMD ready** - The QIF is a regulated fund that already meets the standards set out in the EU's Alternative Investment Fund Managers Directive.
- **Tax efficient** - Both the fund and non-resident investors are not subject to Irish taxation while QIFs may also hold investments through special purpose vehicles to improve tax efficiencies.
- **Tried and tested** - The QIF has a proven track record as a regulated and flexible solution for alternative investment managers.

What types of funds are set up as QIFs?

The QIF can accommodate a wide range of eligible assets and investment strategies. QIFs have been set up as:

- Alternative investment funds (including hedge funds)
- Fund of funds
- Sovereign wealth funds
- Property / real estate funds
- Venture capital / private equity funds
- emerging markets funds
- Infrastructure funds
- Capital protected or guaranteed funds
- Single country or regional funds

Key investment rules

- Where a QIF invests more than 50% of its assets in another scheme the QIF is regarded as a feeder type investment.
- QIFs established as fund of funds may invest up to 100% in unregulated schemes subject to a maximum of 50% in any one unregulated scheme.
- While the Central Bank does not impose risk diversification requirements, a QIF established as an investment company must comply with the aim of risk spreading as per the requirements of Part XIII of the Companies Act 1990.
- A QIF may not raise capital from the public through the issue of debt securities. However, the Central Bank does not object to the issue of notes by authorised collective investment schemes, on a private basis to a lending institution to facilitate financing arrangements. Details of the note issue should be clearly provided in the prospectus.

Qualifying investors

The Central Bank recently revised the criteria for investment in a QIF in order to reflect the requirements under the AIFMD. The new requirements are:

- Minimum initial subscription per investor in a QIF of €100,000 with no limit on subscriptions thereafter
- A professional investor within the meaning of Annex II of the Markets in Financial Instruments Directive (MiFID)
- An investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that they have the appropriate level of expertise
- An investor who certifies that they are an informed investor by providing written confirmations

Appointment of a prime broker

An Irish custodian must be appointed to the fund. The prime broker is appointed by the custodian on a sub-custodian basis. There is no limit on the extent to which assets may be passed to a prime broker. Key requirements in relation to the use of prime brokers include:

- The arrangement must incorporate a procedure to mark positions to market daily in order to monitor the value of assets passed to the prime broker on an ongoing basis.
- The prime broker must agree to return the same or equivalent assets to the fund.
- The arrangement must incorporate a legally enforceable right of set-off for the fund.
- The prime broker must be regulated to provide prime broker services by a regulatory authority; must have a minimum credit rating of A1/P1; and must have shareholder's funds in excess of €200 million (or its equivalent in another currency).
- Relationships with prime brokers must be fully disclosed in the prospectus.

Borrowing/leverage rules

A QIF is not subject to borrowing or leverage limits but the prospectus must specify the extent to which borrowing or leverage may be used.

Redemption restrictions

The Central Bank requires that the time between submission of a redemption request and payment of settlement proceeds must not exceed 90 calendar days in the context of a QIF feeder or fund of funds scheme, including QIFs which provide for dealing on a more frequent basis (e.g. monthly, weekly etc.).

The Irish QIF is the ideal regulated solution for alternative investment fund managers.

Sophisticated UCITS

What are they?

A sophisticated UCITS is a fund that widely invests its assets in financial derivative instruments (FDIs) or uses complex strategies and instruments. A UCITS fund may be considered to be 'sophisticated' where the use of FDIs forms a fundamental part of the UCITS fund's investment objective and they would be expected to be used in all market conditions.

Advantages of Sophisticated UCITS

- Enhanced distribution: UCITS is a global brand sold in over 70 countries
- Tried and tested regulated framework
- Focus on risk management and investor protection
- Lower minimum investment amounts
- Daily liquidity
- Tailor fund to client's risk/reward profile
- Flexibility to accommodate alternative investment strategies

How does it work?

Under the UCITS III package of measures FDIs may be used subject to certain restrictions. A sophisticated UCITS fund cannot hold physical stocks and instead consists entirely of FDIs and cash or cash equivalents.

UCITS funds can also invest in a range of other collective investments, including index funds and exchange traded funds, subject to the certain rules on eligible assets and investment restrictions.

The use of derivatives is permitted provided that:

- The relevant reference items or indices consist of eligible assets and/or financial indices, interest rates, foreign exchange rates and currencies.
- The FDIs do not expose the UCITS to risks which it could not otherwise assume.
- The FDIs do not cause the UCITS to diverge from its investment objectives.

UCITS investment possibilities	
Short positions though derivatives	✓
Physical short selling	✗
Long/short 130/30 funds	✓
Leverage	✓
Absolute return	✓
Futures/options	✓
Hedge fund indices/financial indices	✓
Repos and other derivatives used in efficient portfolio management	✓
OTC derivatives (subject to criteria)	✓
Derivatives on commodity indices	✓
Derivatives on commodities	✗

Risk management

UCITS engaging in complex strategies are required to calculate risk measures daily using the Value at Risk ("VaR") model to quantify maximum loss in normal market conditions. Absolute VaR or Relative VaR may be applied and the fund must use stress testing in order to help manage risks related to possible abnormal market movements.

A UCITS fund must submit a report on its FDI positions annually to the Central Bank which is included within the annual report of the UCITS. This report must be provided to the Central Bank at any time on request.

A sophisticated UCITS is a fund that widely invests its assets in financial derivative instruments (FDIs) or uses complex strategies and instruments.

Fund authorisation

Fund authorisation

Setting up a fund in Ireland is a two-stage process in which the promoter/investment manager is firstly approved, followed by approval of the fund itself and the arrangements with the various service providers.

Step 1: Promoter/investment manager approval

The promoter/investment manager does not have to be located in Ireland or subject to direct authorisation or supervision by the Central Bank but must submit a standard application so that the Central Bank can satisfy itself as to the standing of the promoter/investment manager in its home jurisdiction.

A fast track promoter approval of one week is available for applicants already regulated within the European Economic Area (EEA). Otherwise the Central Bank will issue its first comments on the application within 25 working days.

Step 2: Fund approval

To obtain approval for an Irish authorised investment fund, the promoter must submit an application to the Central Bank including certain documentation such as:

- Application form
- Prospectus
- Memorandum and Articles of Association / Trust Deed / Deed of Constitution
- Prospectus
- Business plan
- Custody / administration / investment management / advisory / distribution agreements
- Individual Questionnaires / declarations for directors of the fund

A fund can typically be approved within 6 to 8 weeks. Under a fast track approval, the Central Bank will issue its first comments on the application within 10 working days. The Central Bank consistently meets and often exceeds the timeframes it has set out in its Stakeholder Protocol.

The Central Bank consistently meets and often exceeds it's timeframes for fund and promoter approval. A fund can typically be approved within 6 to 8 weeks.

Service providers

Service providers

Selecting service providers to an Irish fund forms an integral part of any fund set-up. Service providers typically consist of the investment manager, administrator, transfer agent ('TA'), custodian and trustee and, in the case of a hedge fund, the prime broker.

Irish fund service providers must be authorised either under the Investment Intermediaries Act (1995) or the Markets in Financial Instruments and Miscellaneous Provisions Act (2007).

Selecting a service provider

When selecting a service provider, the fund promoter should carry out a detailed review of the market taking into account the fund's specific needs. Of particular importance is the assessment of fiduciary risk, that is the likelihood of the service provider breaching its client's trust by failing to meet its contractual obligations.

Taking this into account, the fund promoter should pay particular attention to the following:

- **A solid organisational structure** - Identifies the service provider's ability to meet its obligations in a timely, systematic and orderly manner in accordance with fiduciary standards, internal guidelines and applicable legislation and regulations.
- **Good management quality and business strategy** - The service provider's profile is strongly influenced by the management's professional skills, experience and interest in staff development. An understanding of the service provider's business philosophy and strategy will help the fund promoters ascertain its long term feasibility.
- **Financial soundness** - Determines the ability of the service provider to support current and future obligations and activities.
- **Disciplined risk management and compliance** - Involves assessing the service provider's process of identifying, evaluating, monitoring and managing risks.
- **Client relationship management** - Ascertain whether the service provider will have the continued ability to service clients, communicate information to clients, comply with laws and regulations and maintain the client's day-to-day records.
- **Technology** - An analysis of the service provider's hardware and software, future technology philosophy and strategy, contingency plans and integration of technology with the operations function.

A promoter should also consider the experience and expertise of the service provider in servicing the particular type of fund, prior to assigning the service provider mandate.

Outsourcing

Outsourcing of certain fund administration activities is permitted Ireland to reflect the global operating model that has evolved over the years.

In July 2011 the Central Bank published its new requirements on outsourcing in relation to the administration of funds. The new requirements replace the previous minimum activities regime and were implemented to reflect changes under the UCITS IV Directive which enables funds to be administered outside their EU member state of domicile. The outsourcing requirements apply to the administration of both UCITS and non-UCITS funds and Irish domiciled and non-Irish domiciled funds.

Under the regime "core administration activities" involving oversight and control cannot be outsourced while the fund administration company retains ultimate responsibility for any outsourced activities.

When selecting a service provider, the fund promoter should carry out a detailed review of the market taking into account the fund's specific needs.

Migrating your fund

Fund promoters are increasingly seeking to move their funds onshore to a recognised, regulated domicile with an appropriate regulatory and tax framework and the right expertise. Ireland checks all the boxes from an international promoter perspective and introduced a new streamlined fund re-domiciling process in 2009.

Why move your fund to Ireland?

- Robust and efficient regulatory environment
- Internationally recognised EU jurisdiction
- Global fund distribution to over 70 countries
- English-speaking, common law jurisdiction
- No.1 for alternative investment fund administration
- The most favourable tax environment
- Fast-track authorisation for Qualifying Investor Funds
- Optimum time zone to ensure global coverage
- Efficient fund re-domiciling process
- ISE is the leading stock exchange for listing funds

Ireland's streamlined fund re-domiciling process

The Companies (Miscellaneous Provisions) Act 2009 introduced a new, efficient fund re-domiciling process that ensures minimal disruption to day-to-day management and distribution of the fund with no adverse tax consequences for the underlying investors. The traditional approach, which involves liquidating the offshore fund and transferring the assets to a new Irish fund, is still available but the new process ensures continuation of the existing fund.

Key advantages

- Ability to retain the fund's performance track record post migration
- Avoid potential adverse tax consequences for investors that might otherwise arise under a merger of an offshore fund with a new onshore fund
- Prevent a charge to transfer taxes that might otherwise arise from the transfer of assets under a fund merger
- Removal of the administrative burden of moving assets to a new fund
- Upon authorisation, qualification is assured for the tax exemptions available for Irish regulated investment funds
- Simultaneous authorisation (by the Central Bank) and registration (by the Companies Registration Office) to avoid delays and ease the administrative burden
- No requirement for a general meeting of shareholders of the migrating company in Ireland

The streamlined fund re-domiciling process is available to both companies and unit trusts. Funds domiciled in the following jurisdictions can avail of the new re-domiciling framework:

- Bermuda
- British Virgin Islands
- Cayman Islands
- Guernsey
- Jersey
- The Isle of Man

Ireland checks all the boxes for funds seeking to re-domicile.

Tax framework

Ireland's provides a highly efficient, clear and certain tax environment for investment funds. Irish investment funds are not subject to tax while the Irish tax system is simple for international investors – no Irish tax if you are non-resident.

Key features

- No fund or annual subscription tax
- No Irish taxes on income or gains made by non-Irish resident/ordinarily resident investors on their investment fund holdings
- No wealth tax for funds or their investors
- No gift or inheritance tax applicable to fund units gifted/inherited where non-Irish parties are involved
- No stamp duty on fund units

Corporate tax rate of 12.5%

Fund management companies, investment managers and fund service providers can avail of Ireland's 12.5% corporate tax rate.

Ireland provides a highly efficient, clear and certain tax environment for investment funds.

VAT

Irish funds are generally not obliged to charge VAT as they are treated as providing exempt financial services. Most of the management and related services provided to the fund are exempt from VAT.

Double tax treaties

Ireland has an extensive double tax treaty network covering 63 countries including all major EU, Asian, Middle East and OECD jurisdictions. New double taxation agreements are continuously being negotiated.

Ireland has a comprehensive double taxation treaty agreement with the US under which funds are specifically recognised as Irish tax resident for treaty purposes. This provides opportunities for Irish funds to access the benefits of the US-Ireland tax treaty and is a considerable advantage for exchange traded funds.

Tax certainty under UCITS IV

The UCITS IV Directive enables consolidation of fund ranges through cross-border mergers and master-feeder fund structures. Ireland's Finance Act 2010 has provided clarity and certainty with regard to measures under UCITS IV so that no adverse tax consequences arise for foreign funds that are managed from Ireland or merge with Irish funds.

Irish Stock Exchange listing

The Irish Stock Exchange (ISE) is recognised worldwide as the leading centre for listing investment funds with approximately 3,000 funds listed.

Why list on the ISE?

- **Increase distribution** - A listing increases a fund's potential investor base. Institutional investors may be restricted or prohibited from investing in securities which are not listed on a recognised or regulated stock exchange.
- **Enhance marketability** - A listing on a well regulated and recognised European stock exchange, such as the ISE, provides a valuable marketing tool for fund promoters.
- **Enhance transparency** - A listing provides publicly available information for investors and allows investors to refer to a publicly quoted price for their investments.
- **Best practice** - The ISE has a world class trading and post-trade infrastructure and monitoring of compliance with the ISE's regulatory best practice standards ensures an investor can take additional comfort from an ISE listing.
- **Efficient** - The ISE adheres to strict turnaround times and a listing can usually be obtained in less than four weeks. All funds authorised by the Central Bank benefit from a fast track review process which eliminates duplication. An ISE listing is also highly cost efficient.

Listing particulars

The fund must publish listing particulars, approved in advance by the ISE, which include all the information which is relevant and necessary to allow a potential investor to make an informed assessment of the fund. The listing particulars must contain information on:

- Persons responsible for the listing particulars, the auditors and other advisers
- Units/shares for which the application is being made
- The fund's investment policy
- The fund's directors and service providers
- The fund's assets and liabilities and financial position

Umbrella and sub funds

In the case of an umbrella fund, information is not required for all sub-funds, but only for the particular sub-fund which is seeking a listing. The information provided must be easily analysable and comprehensible.

Where a sub-fund has commenced operations prior to listing, the ISE requires certain financial information to be included in the listing particulars. A sub-fund which has been in operation for less than twelve months and whose audited annual accounts are not available, must provide an audited statement of net assets and portfolio information.

Ongoing requirements

The principal 'continuing obligations' are:

- An annual report and audited accounts must be sent to the ISE and unitholders within 6 months of the period end
- An interim report covering the first six months of each financial year must be sent to the ISE and published or sent to unitholders within 4 months of the period end. The interim report need not be audited
- Notification to the ISE of the net asset value, upon calculation
- The fund must notify the ISE, without delay, of any major new developments in its activities which are not public knowledge and which may lead to a substantial movement in the price or net asset value of its units
- Details on controlling shareholders', directors' or investment managers' interests must be notified to the ISE
- An annual fee is payable to the ISE

The ISE is the world's leading exchange for the listing of investment funds.

How can Deloitte help?

Deloitte offers a complete range of professional advisory services to the investment management industry, including fund promoters, managers, fund administration businesses and custodians.

We are the world's only full-service professional advisory firm combining expertise in assurance/ risk, regulatory, taxation, operational and strategic consulting to deliver an integrated solution for your business through our Investment Management Advisory practice.

Our services include:

- Fund setup and structuring
- Due diligence and service provider selection
- Auditing, accounting and assurance
- Tax advisory and operational taxes
- Regulatory and compliance services including UCITS IV & V, AIFMD, MiFID, FATCA, Dodd Frank
- Corporate governance advice
- Regulatory inspection preparation and remediation
- Anti-money laundering review and guidance
- SAS 70 review
- Valuations review and model validation
- Process design
- Operational change, cost efficiency reviews and streamlining
- M&A, IPOs, liquidations and restructuring
- Post-merger integration
- Secondments and recruitment
- Business strategy
- Data analytics and benchmarking

Deloitte offers a complete range of professional advisory services to the investment management industry, including fund promoters, managers, fund administration businesses and custodians.

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