Which Irish fund structure?
Getting the right fit

Investment funds can be established using a variety of legal structures, depending on the country in which the fund is established. In Ireland there are four legal structures available for setting up an investment fund: Unit Trust, Investment Company, Investment Limited Partnership and Common Contractual Fund. The regulatory status is a key consideration in determining a fund structure and there are two distinct types of regulatory status' applicable to Irish domiciled funds, namely (i) UCITS (Undertaking for Collective Investment in Transferable Securities) and (ii) Non-UCITS funds.

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

To determine which structure is most appropriate, factors such as target investors and their location, the proposed investment strategy of the fund, the minimum subscription amount and the capital or income objectives of the fund must be considered. The decision as to regulatory status is usually made first depending on marketing or distribution objectives.

Regulatory status

UCITS

A UCITS must be an open-ended vehicle and can be structured as a Unit Trust, a Variable Capital Company (which is a plc) or as a Common Contractual Fund (CCF). UCITS funds authorised in Ireland are granted authorisation for distribution in all EU member states subject to certain local regulations. UCITS must comply with extensive investment and borrowing restrictions set out in the Financial Regulator's UCITS Notices which are designed to ensure that these funds are suitable for retail sale.

Non-UCITS

Non-UCITS can be structured as an Investment Company (fixed or varible capital), a Unit Trust or an Investment Limited Partnership. It is expected that a Non-UCITS CCF structure will be available in the future. A Non-UCITS fund can be either open-ended or closed-ended. Four categories of Non-UCITS exist: retail, institutional, qualifying investor and professional investor funds. In addition, a number of specialist fund structures are only available as Non-UCITS. Non-UCITS retail funds are subject to the general investment and borrowing restrictions as specified in the Non-UCITS Notices.

Legal structure

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 2003, 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 Financial Regulator 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, with segregated liability for each subfund. 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 Financial Regulator 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. 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 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 investors 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.

Specialist fund structures

The Financial Regulator can authorise a variety of fund structures, provided that sufficient investor protection is given and adequate risk warnings exist. Some of the investment restrictions that generally apply are either relaxed or waived for funds with a specialist investment objective.

Examples of such fund structures include:

- Capital protected futures and options funds
- Closed ended funds
- Exchange traded funds
- Feeder funds
- Retail funds of Hedge funds
- Hedge funds
- Leveraged futures and options funds
- Money market funds
- Property funds
- Umbrella funds
- Venture / development capital funds

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