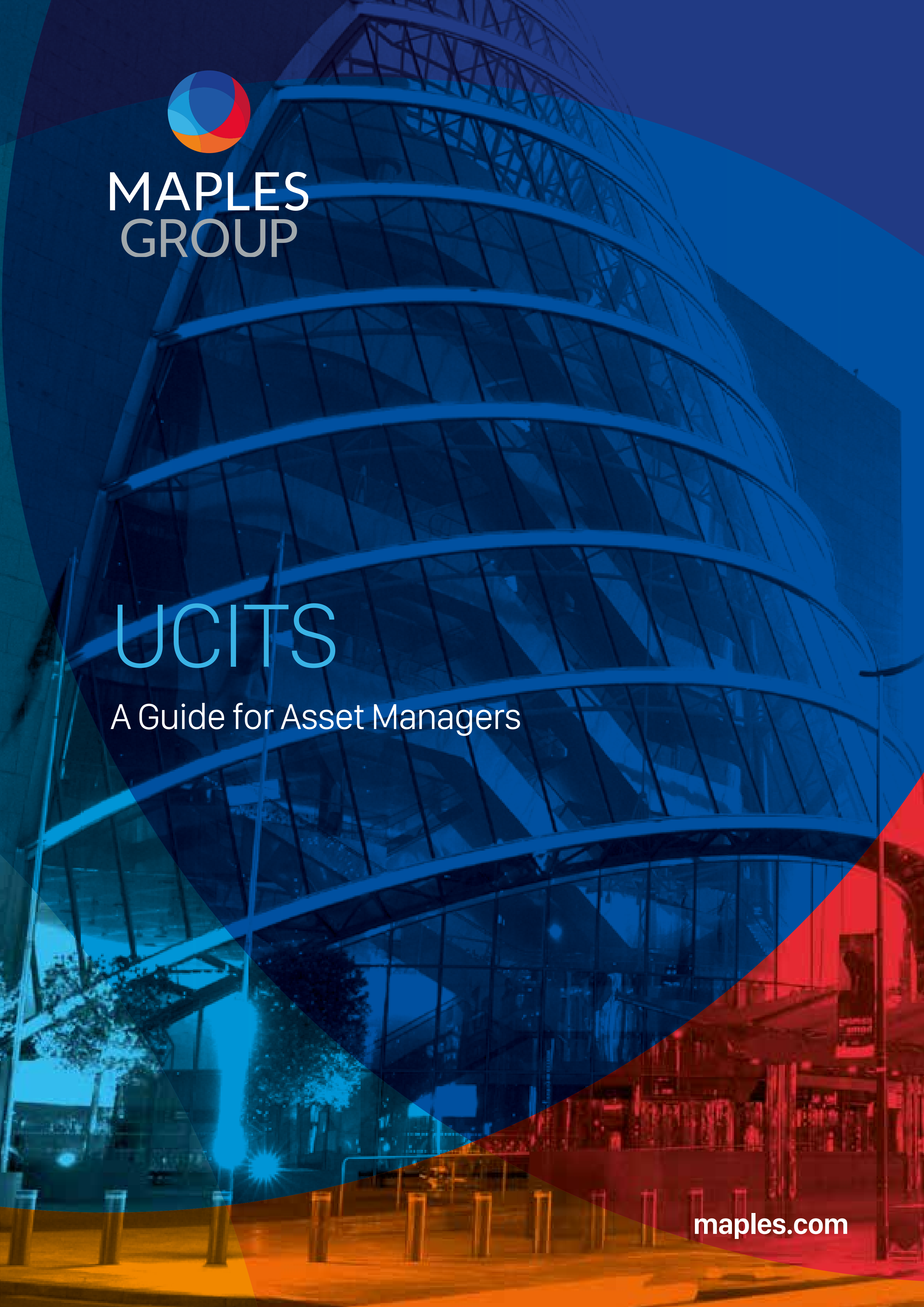


MAPLES GROUP

UCITS

A Guide for Asset Managers

maples.com

OVERVIEW

UCITS are open-ended collective investment schemes established and authorised pursuant to EU law, as implemented in the member states of the EU. Perceived as safe and well regulated investments, once authorised, a UCITS can be marketed and sold to retail investors throughout the EEA. Over the past 30 years, the UCITS product has become increasingly popular as a liquid, transparent, diversified and robustly regulated investment product with Ireland at the forefront of UCITS investment fund product development.

Ireland is widely recognised as one of the world's leading international fund centres for domiciling and servicing collective investment schemes. Irish UCITS funds are regulated by the Central Bank of Ireland (the "Central Bank") pursuant to the various UCITS Directives, as implemented into Irish legislation.

UCITS today can invest in a diverse range of financial instruments. This starts with investment in 'transferable securities' (broadly being listed shares and bonds) as well as: (i) shares of other regulated funds; (ii) cash, cash equivalents and money market instruments; and (iii) financial derivative instruments. There is also a facility for investment of up to 10% in unlisted securities.

As the rules for permitted asset classes and governance requirements continue to evolve, UCITS continue to be a popular investment management product. Critically, by using derivatives, UCITS can generate leverage and achieve synthetic short exposure. Accordingly, most alternative investment strategies (but not all) can be replicated, to a certain extent, within a UCITS. However, it should be said that there are elements of the UCITS regime that can restrain this process and add an administrative burden. These include: (i) asset eligibility rules; (ii) asset diversification rules; (iii) liquidity requirements; (iv) risk and counterparty exposure limits; and (v) operational, compliance and governance rules. These elements are considered in more detail within this brochure.

UCITS EUROPEAN GROWTH

UCITS are and continue to be an appealing product structure for asset managers looking to access both European retail and institutional investors and international investors.

A UCITS authorised in one member state can benefit from a passport regime allowing it, subject to notification, to be offered in another member state.

As reflected in the statistics below, UCITS have achieved phenomenal growth levels, particularly in Irish UCITS over the last decade.

€9.7 trillion

in European UCITS[1]

€736 billion

Inflows in European UCITS in 2017

262%

Asset levels in Irish UCITS up 262%[2]

€1.8 trillion

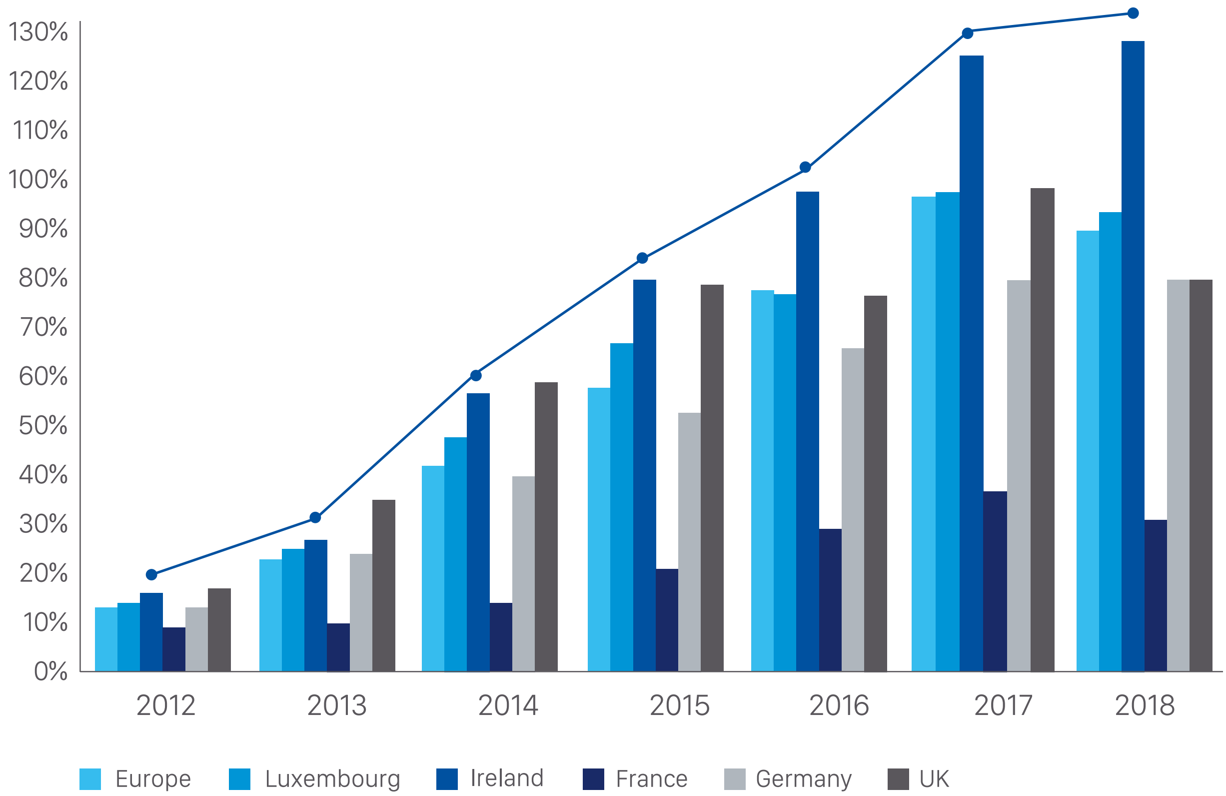
in Irish UCITS[3] 18.8% growth in 2017

1 Statistics as at end December 2017. Source: EFAMA.
2 Since June 2008. Statistics as at end December 2017. Source: EFAMA.
3 Statistics as at end June 2018. Source: Irish Funds.

UCITS IRISH ASSET LEVELS

Ireland is now the strongest growing fund domicile in Europe. Assets in Irish UCITS funds have significantly outgrown its main European rivals (Luxembourg, the UK, France and Germany) over the last ten years.

Ireland - Fastest Growing of Largest European Fund Domiciles



Source: Irish Funds, June 2018

KEY FEATURES OF A UCITS

Liquidity	A UCITS must be able to offer redemptions at least twice a month, i.e. fortnightly. A 10% fund level gate is permitted. Redemption proceeds to be received within 14 calendar days/10 business days of the redemption deadline.
Asset Eligibility	At least 90% of assets must be in liquid (UCITS eligible) instruments (such as listed equities, fixed income, money market instruments, regulated funds and derivatives on eligible assets or financial indices). No direct short-selling permitted. Direct exposure to real estate and commodities is not permitted.
Asset Diversification	No single asset can represent more than 10% of the fund's assets; holdings of more than 5% cannot in aggregate exceed 40% of the fund's assets. This is known as the "5/10/40" rule. There are certain exceptions for government issued securities and for index tracking funds.
Borrowing And Leverage Limits	Temporary borrowing is limited to 10% and not permitted for investment purposes. A general leverage limit of 100% is applied (although use of Value-at-Risk ("VaR") to measure global exposure for more complex strategies gives significant flexibility in this regard).
Independent Service Providers	Irish based, regulated depositary, administrator and auditor provide independence in key support and oversight functions.
Retail Investors	No minimum investment level is applied under UCITS regulation (although funds may fix levels themselves); no investor eligibility criteria is applied.
Legal Structures	UCITS can be established as Irish Collective Asset-management Vehicles ("ICAVs"), investment companies, unit trusts and Common Contractual Funds ("CCFs").
Availability as a Segregated Umbrella	UCITS can operate as a standalone fund or as an umbrella fund, with multiple sub-funds with segregation of liability at sub-fund level.
Operational, Compliance And Governance Rules	Detailed operating rules are applied covering, for example, valuations, board oversight and monitoring, set out in greater detail in Central Bank guidance.
Key Investor Information Document ("KIID")	The KIID is a simplified product factsheet that must be produced in a rigid format. This includes disclosure of an objective risk measurement classification system (synthetic risk reward indicator), disclosure of maximum ongoing charges and past performance data.

They have great strength in handling country registrations and all aspects of maintaining all regulatory filings...

Commercially minded, aware of new developments and very proactive...

They are outstanding on international aspects...

CHAMBERS EUROPE

Highly knowledgeable, proactive and, above all, pragmatic...

...regarded by some as being 'the best in Dublin'...

Exceptional technical knowledge...

LEGAL 500

Partners and associates are technically excellent and can be relied on for practical and sound business advice...

The team at Maples is outstanding...

Maples is one of the key law firms in Ireland. They're very commercial, responsive and solutions-orientated...

IFLR

The Maples Group is independently ranked first amongst Irish law firms in Ireland in terms of total number of funds advised (based on the latest Monterey Ireland Fund Report, as at 30 June 2018).

DEPOSITARY AND THE MANAGEMENT COMPANY

Depositary

The entity responsible for holding and safe-keeping the assets of a UCITS is a depositary. This role is highly regulated and any entity seeking to fulfil this role for Irish UCITS must be located in Ireland, and regulated and supervised by the Central Bank or an Irish branch of an EU regulated entity. A single depositary is appointed to each UCITS. The core functions of a UCITS depositary are oversight, safekeeping and cash monitoring.

A depositary to a UCITS is strictly liable for the loss of financial instruments that can be held in custody, unless it can prove that the loss has arisen as a result of an external event, beyond its reasonable control. In the event of such a loss, the depositary is required to return identical assets to those lost or a corresponding amount to the UCITS without undue delay. This strict liability affords investors in a UCITS a strong level of protection against loss. The level of protection for assets that are not financial instruments that can be held in custody is significantly lower.

Management Company

Each UCITS must appoint a management company or be structured as a self-managed UCITS. The core activities covered by the UCITS management company passport are investment management, administration and marketing. Historically only UCITS constituted as a unit trust or CCF appointed a third party management company. UCITS structured as an investment company or an ICAV were typically structured as a self-managed UCITS.

There has been a noticeable trend towards the externally managed UCITS model, largely as a result of the increased regulatory burden and substance requirements being placed on self-managed UCITS. In fact, since the Central Bank introduced its new substance and governance requirements in late 2015, only 17% of authorised UCITS have been established as self-managed structures. UCITS management company model now prevails.

Once authorised, a UCITS management company can provide services not only to UCITS established in its home member state, but also to UCITS established in other member states. This provides flexibility for management companies to provide collective portfolio management services cross border, without being obliged to be established in the UCITS home member state.

LEVERAGE, USE OF DERIVATIVES AND COUNTERPARTIES

Global Exposure

The Central Bank requires a UCITS to calculate its 'global exposure' on at least a daily basis through either of the following methodologies:
(i) Commitment Approach; or
(ii) Value at Risk.

Commitment Approach

Under the Commitment Approach, global exposure is measured by the incremental exposure and leverage generated by the UCITS through the use of Financial Derivative Instruments ("FDIs") (including any embedded derivatives) which may not exceed the total of the UCITS net asset value. Through applying this approach, the UCITS cannot have global exposure of in excess of 100% of its net asset value.

Value at Risk

Under the Value at Risk or "VaR" approach, global exposure is measured by the market risk of the UCITS. This means a measurement of the maximum expected loss at a given confidence level over a specific period. The 'market risk' of a UCITS is not the same as the 'leverage' of a UCITS. A UCITS using the VaR approach is therefore not limited to a global exposure of no more than 100% of its net asset value, as is the case for a UCITS using the Commitment Approach.

For UCITS using either absolute VaR or relative VaR to calculate global exposure, disclosure must be made in the offering document disclosing an expected level of leverage, calculated on the basis of the sum of the notionals method. However, there is no regulatory maximum level imposed in respect of this disclosure. Stated levels can be high, provided in all cases that the UCITS meets the VaR disclosure requirements.

Counterparty Exposure

Prime brokers may not be engaged by UCITS in a full service manner as would be customary for alternative investment funds. However, most prime brokers offer synthetic prime brokerage services to comply with UCITS rules. In relation to such prime brokers/derivative counterparties, UCITS apply risk exposure rules, counterparty exposure limits and also counterparty eligibility criteria, addressing counterparty credit risk issues.

The maximum amount a UCITS may be exposed to a counterparty is 10% of the net asset value of the UCITS, depending on the classification of the counterparty. An EU credit institution amount is 10%; any other regulated counterparty is 5%.

Counterparty exposure will be measured based on the mark-to-market value of the derivatives (subject to certain adjustments). In essence, at a point in time, if the positions were settled, what would the counterparty owe the UCITS in total? That amount needs to be less than the relevant 5% or 10% limit. There is a range of means by which a UCITS can operate a derivatives portfolio with a single counterparty and manage counterparty exposure within the limits. For example, large 'in the money' positions can be settled and rolled over before limits are exceeded – so the counterparty pays its obligations to the UCITS regularly (for example, by triggering set buffer levels) and never owes more than the maximum 5% or 10% at any one time.

To reduce the exposure, other tools are also available. Netting of counterparty exposures is permitted (where there is a contractual netting agreement and therefore a single flow of obligations). Also, exposure can be reduced to the extent that the UCITS receives eligible collateral from the counterparty or operates a pledge account for cash/ collateral which remains within the depositary's custodial network, and is subject to the control and security interest of the counterparty.

DISTRIBUTION OF UCITS

The Maples Group Global Registration Services

The Maples Group's Global Registration Services ("GRS") team provides a range of services, including supporting UCITS (domiciled in Ireland and Luxembourg) by providing an integrated global network of experts coordinated by a dedicated central team who manage and support all legal and regulatory aspects governing the cross border marketing of these products on both a private placement and public offer basis.

Combining expert local knowledge with full project management functionality through a seamless service creates a powerful and efficient multi-jurisdictional solution. In doing so, the GRS team delivers tailored solutions through a single point of contact, which frees valuable internal resources and generates significant added value for our clients.

Our aim is to offer a service that provides efficiency, value and peace of mind so that our services become solutions, tailored to the needs of our clients.

We offer our clients a range of services addressing regulatory aspects to help optimise fund distribution activities globally. We believe that by having a dedicated team solely focused on registration business, coupled with our experience in dealing with a broad range of local services, we provide the best service to our clients and can proactively identify areas where economies of scale can be achieved.

Our core GRS service offering includes:

- Market Intelligence;
- Market Entry through the EEA Passport or Restricted Offerings; and
- Maintenance.

For further details please refer to our GRS brochure on **Marketing UCITS and AIF through the European Passport.**

INDICATIVE LAUNCH TIMETABLE FOR A UCITS

In the context of the establishment and authorisation of an Irish UCITS, we would generally anticipate a timeline of approximately 10-12 weeks from the point at which all parties have been engaged and have commenced work on the project. Below is a very high level overview of some key steps.

WEEK 1

Agree terms of initial draft prospectus (promoter and the Maples Group, with input signed off from Irish tax advisers, depositary/administrator). Receive draft depositary/ administration agreement from Irish administrator/depositary.

WEEK 2

Verify the investment manager selected has been previously approved by the Central Bank/file application for investment manager approval with the Central Bank.

WEEK 3

File initial fund documentation submission with the Central Bank and liaise with proposed directors regarding online IQ system. Identify target countries of passport/registration.

WEEK 4-5

Agree terms of depositary/ administration agreement and investment management agreement. Initiate KIID production[4].

WEEK 6-7

Address initial Central Bank comments on documentation. Agree term of local paying agent agreements and country supplements.

WEEK 8-9

Address subsequent Central Bank comments on documentation.

WEEK 10-11

Operational matters addressed with account opening. Hold fund launch board meeting to appoint directors and approve fund documentation. Receive confirmation of initial capital from administrator (in fund account).

WEEK 12

Finalise fund documentation, agree with all parties and execute. Make authorisation filing with the Central Bank, obtain UCITS authorisation. Initiate UCITS passport application and registrations in other markets. Acceptance of seed investment.

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[4] For further details, please refer to our UCITS KIID and PRIIPs KID Production brochure.

TAX HEADLINE POINTS FOR UCITS

Tax Efficient	No Irish taxation arises on income or gains at the level of the Irish UCITS fund.
No Withholding Tax	No withholding tax on dividend or redemption applies on payments to non-Irish investors.
Tax Treaty Access	Irish UCITS funds may be entitled to benefit from the provisions of Ireland's double tax treaties, including the US / Ireland treaty, subject to the provisions of each treaty and the rules in the relevant treaty partner country in each case.
Vat Exemptions	The provision of certain standard services to Irish UCITS funds (e.g. investment management, administration, transfer agency, depositary, etc.) are treated as VAT exempt in Ireland. To the extent that the Irish UCITS fund incurs Irish VAT on certain services it receives (e.g. audit and legal fees), it may recover a portion of this VAT based on its recovery rate.
Stamp Duty and Subscription Taxes	No stamp duty is payable in Ireland on the issue, transfer, repurchase or redemption of shares in an Irish UCITS fund. No subscription taxes are levied by the Irish tax authorities on the assets of an Irish UCITS fund.
Exchange Of Information	Ireland is fully compliant with the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Ireland has implemented both the US FATCA regime and the OECD common reporting standard ("CRS"). Irish UCITS funds are thus capable of complying with international FATCA and CRS requirements. Provided the Irish UCITS fund complies with its FATCA obligations, no FATCA withholding should apply on payments from US sources.

FREQUENTLY ASKED QUESTIONS

What is the most popular structure for Irish UCITS?	The ICAV is by far the most popular choice of vehicle for asset managers forming Irish UCITS. For more details on the ICAV structure, please refer to **ICAV - A Guide for Asset Managers.**
Can a fund redomicile to Ireland under the UCITS regime?	Ireland offers a corporate migration regime supported by specific legislation as well as regulatory measures supporting unit trust redomiciliations. Funds can migrate from Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and the Isle of Man. Migrating funds can be authorised as UCITS.
Can a UCITS merge with another UCITS?	Yes. UCITS legislation provides for a specific merger regime for UCITS funds under which Member States must allow for cross-border and domestic mergers in accordance with one or more of the following merger techniques: (i) Where a UCITS transfers all of its assets and liabilities to another existing UCITS without going into liquidation; (ii) Where at least two UCITS transfer all their asset and liabilities to a new UCITS which they form without going into liquidation; and (iii) Where one or more UCITS, which continue to exist until the liabilities have been discharged, transfer their net assets to another sub-fund of the same UCITS, to a new UCITS or to another existing UCITS.

Are there requirements in relation to the regulatory status of the investment manager?	Ireland will recognise and approve investment managers who are regulated by an EU supervisory authority (such as the AMF, BaFin) or global equivalents (such as the SEC, NFA or CFTC in the United States, the SFC in Hong Kong and regulators in other jurisdictions) subject to filing short organisational and background details to ensure the integrity of the investment manager together with details of the financial resources of the investment manager.
Can UCITS apply credit strategies?	Yes. Credit strategy managers can invest across the full credit spectrum and use derivatives in order to generate returns. In particular, UCITS may invest in various types of asset-backed securities ("ABS") such as mortgage-backed securities.
Can UCITS invest in, or gain exposure to, financial indices?	Yes. Financial indices, whether or not comprised of eligible assets, can be considered eligible financial indices provided that they comply with the general conditions applicable to financial indices, as set out in guidance issued by the Central Bank, which implements the ESMA guidelines on exchange traded funds and other UCITS issues (ESMA/2012/832EN).
Can UCITS invest in, or gain exposure to, commodities?	Yes, however direct exposure to commodities is not permitted. A UCITS may invest in a financial index (using a derivative, such as a swap) or invest in a structured products known as "structured financial instruments" or "SFIs" which can be classified as a transferable security to gain indirect exposure to commodities.

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The Maples Group is a leading service provider offering a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. We distinguish ourselves with a client-focused approach, providing solutions tailored to your specific needs. Our global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure that clients gain immediate access to expert advice and bespoke support, within convenient time zones.

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