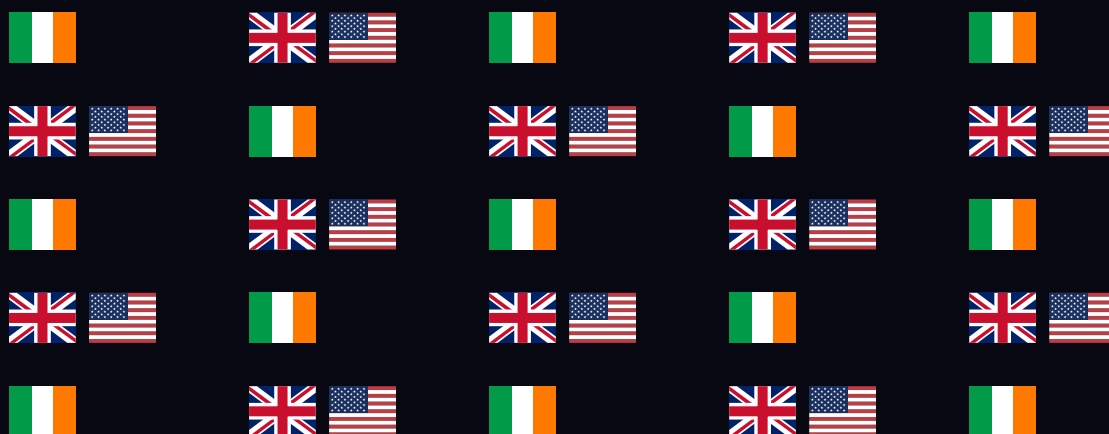


# HEDGE FUNDS

## Ireland



# Hedge Funds

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Quick reference guide enabling side-by-side comparison of local insights, including into the market and policy climate; formation and management; regulation, licensing and registration; taxation; offering, selling and trading restrictions; liquidity terms; and recent trends.

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## MARKET AND POLICY CLIMATE

### Market snapshot

How would you generally describe the state of the market for hedge funds in your jurisdiction? (Please include any relevant market statistics, notable valuations, key market players, etc.)

Ireland has long been one of the leading European hedge fund domiciles. Hedge funds form a key subset of the broader alternative investment fund (AIF) market in Ireland, with assets under management of €804 billion, comprising 3,093 AIFs as at December 2022. This represents an average growth of over 6 per cent in number of AIFs (based on statistics compiled by Irish Funds) over the past 10 years. Aside from Ireland's position as a hedge fund domicile, it is also one of the world's largest hubs for the servicing and administration of non-Irish hedge funds.

*Law stated - 01 May 2023*

### Government and regulatory policy

How would you describe the general government and regulatory policy towards hedge funds in your jurisdiction?

The Irish government is committed to building on the successes already achieved in the Irish financial services sector. Its vision is for Ireland to be a top-tier location of choice for specialist international financial services and it recognises the importance of investment funds within the financial services sector. In April 2023, the Irish government published the terms of reference for its Department of Finance to conduct a review of Ireland's funds sector and produce a report 'Funds Sector 2030: A Framework for Open, Resilient & Developing Markets', which seeks to ensure that Ireland's funds sector framework is resilient, future-proofed, supportive of financial stability and a continued example of international best practice. The long-standing commitment of the Irish government to the investment funds sector was also previously evidenced in the 2021 statutory enhancement of Ireland's flagship partnership structure, the investment limited partnership, which is intended to promote Ireland as a domicile for closed-ended investment products.

The regulatory objective of the Central Bank of Ireland (CBI) is to maintain a resilient, fair and trustworthy financial system, which sustainably serves the needs of the economy and citizens of Ireland and the European Union. The CBI is keen to see the investment funds sector fulfil its potential as a means of investment in and funding of the European and Irish economies.

The rapid changes in global economies and financial systems in recent years have resulted in an increase in the level and frequency of the CBI's engagement with industry. The hedge fund industry has been among the beneficiaries of clear and practical regulatory frameworks such as the AIF Rulebook and guidance including Questions and Answers issued by the CBI, which are typically preceded by industry consultation and feedback.

*Law stated - 01 May 2023*

## FORMATION AND MANAGEMENT

### Forms of vehicle

What legal form of vehicle is typically used for hedge funds formed in your jurisdiction (limited partnership, corporation, limited liability company, segregated portfolio company, etc)? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

An Irish hedge fund may be structured as an Irish collective asset-management vehicle (ICAV), an investment company (PLC), an investment limited partnership (ILP), a unit trust or a common contractual fund (CCF).

Of these options, the ICAV is by far the most popular structure for hedge funds. The ICAV is a corporate vehicle, formed under the Irish Collective Asset-management Vehicles Act 2015 (the ICAV Act), which has a separate legal personality. A PLC may also be used as a corporate fund vehicle with a separate legal personality and is formed under the Companies Act 2014 (the Companies Act). The board of directors of the respective ICAV or PLC are collectively responsible for the management of the fund.

The ILP is Ireland's flagship partnership vehicle, constituted pursuant to a limited partnership agreement in accordance with the Investment Limited Partnerships Acts 1994 and 2020 (the ILP Act). It does not have a separate legal personality and management is instead exercised through its general partner.

The other key structuring options are (1) the unit trust, which is a popular vehicle for hedge funds targeting Japanese investors; and (2) the CCF, which is popular among pension fund investors that prefer a tax-transparent vehicle. Unit trusts and CCFs do not have a separate legal personality and management is exercised through their respective management companies.

From a regulatory perspective, an Irish hedge fund can be authorised as either an undertaking for collective investment in transferable securities (UCITS) or an alternative investment fund (AIF). However, due to the inherent investment and borrowing restrictions of the UCITS regime, hedge funds are better suited to the flexibility of the Irish AIF regimes, and therefore the discussion below is limited to AIF structures.

Each of the vehicles described above may be structured as either a stand-alone or an umbrella fund. An umbrella fund is made up of one or more individual sub-funds benefiting from statutory segregation of liability, whereby the assets and liabilities of each sub-fund are ring-fenced.

Investors in an ICAV or a PLC hold shares representing a contractual right of participation in the fund, or sub-fund as the case may be, rather than a legal or beneficial interest in the underlying assets of the portfolio. The potential liability of an investor as a result of investment in these funds is limited under the ICAV Act and the Companies Act to the amount, if any, unpaid on the shares respectively held by such investor.

Investors in an ILP, a unit trust or a CCF do not have a beneficial entitlement to any particular asset, but rather a beneficial entitlement to an interest in the underlying pool of assets in a pro-rata proportion to their holding in the fund. In an ILP, this holding is represented by a limited partner interest, and in a unit trust and a CCF it is represented by units. The liability of an investor in an ILP, a unit trust or a CCF is generally limited. Limited partners in an ILP have limited liability in accordance with the ILP Act up to the relevant agreed commitment amount for the interests held, but this limitation will be lost where the limited partner becomes involved in conducting the business of the partnership. The liability of an investor in a CCF is limited under the Investment Funds, Companies and Miscellaneous Provisions Act 2005 to the amount agreed to be contributed for the subscription of units, whereas the liability of investors in a unit trust depends on the terms of the trust deed. Typically, the limitation in the trust deed is consistent with the limitation provided for by statute for investors in a CCF.

*Law stated - 01 May 2023*

### Formation process

What is the process for forming a hedge fund vehicle in your jurisdiction (eg, how long does it typically take? What initial filings are required? What are the initial and ongoing fees and costs? What type of service providers are engaged in the process? Are there any minimum capital requirements, etc)?

To form a hedge fund in Ireland, an application must be made to the Central Bank of Ireland (CBI) seeking authorisation either as (1) a retail investor alternative investment fund, which permits investment by professional and non-professional investors; or (2) a qualifying investor alternative investment fund (QIAIF), which is limited to professional and sophisticated investors. The discussion below is limited only to the QIAIF regime, as this is by far the more common option.

The application is made by the fund's Irish legal adviser and comprises a number of key fund documents in final form together with completed application forms. The core service provider appointments required for authorisation include the fund's designated alternative investment fund manager (AIFM), a depositary, an administrator, an auditor and a money laundering reporting officer. Other common service provider appointments include delegate investment managers and investment advisers (where the AIFM will not fully and directly undertake day-to-day portfolio management of the fund), distributors and placement agents, and prime brokers and sub-custodians.

One of the main advantages of an Irish hedge fund is the regulatory speed to market, with CBI authorisation usually granted within 24 hours of application.

Prior to seeking CBI authorisation, the directors of a corporate fund vehicle are required to be cleared by the CBI under its fitness and probity regime. Fitness and probity clearance can be obtained within 15 business days. The proposed AIFM must also have the necessary approvals to manage an Irish AIF and the investment manager must be cleared by the CBI to act for Irish funds.

On average, it takes between two and three months from commencement of a project to obtain CBI authorisation of a hedge fund as a QIAIF, although this time frame can be expedited.

An application for authorisation is subject to a one-off fee of €5,000, which is payable following authorisation. An application that includes more than one sub-fund incurs an additional fee of €2,000 per additional sub-fund, up to a total maximum fee of €23,000. Each fund is also subject to an annual industry levy of an amount determined based on whether the fund is a standalone fund or an umbrella fund. This levy currently ranges from € 7,165 to € 16,190.

A hedge fund that appoints an external AIFM is not subject to any minimum capital requirements.

*Law stated - 01 May 2023*

### **Custodianship and administration**

Is a hedge fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary? If so, how is that requirement typically satisfied?

Yes. A single depositary must be appointed in respect of any Irish hedge fund. The depositary must satisfy certain eligibility, safekeeping and oversight requirements set out in the European Union (Alternative Investment Fund Managers) Regulations 2013. The depositary may delegate its safekeeping functions to third-party sub-custodians. Administration of the fund must also be performed by an Irish administrator, which may outsource certain non-core functions to entities outside Ireland. A large number of global fund service providers offer depositary and administration services in Ireland.

A fund must have a registered office in Ireland. Corporate funds must also have a corporate secretary in Ireland, which may be a named individual or a body corporate.

Every Irish fund is required to keep adequate accounting records and maintain books and registers in accordance with the statutory requirements. Accounting records should be kept at the registered office but may be kept elsewhere, including outside Ireland, subject to the fund-keeping information and returns in respect of its affairs in Ireland that are sufficient to determine its financial position. A combination of administration and corporate secretarial services is



typically sufficient to satisfy these requirements.

*Law stated - 01 May 2023*

### **Public access to information**

What access to information about a hedge fund formed in your jurisdiction (eg, the identities of investors and the amounts or value of their investments) is the public granted by law? How is it accessed (ie, on file with a public registrar or available from the vehicle upon written request)? If applicable, what are the consequences of failing to make such information available?

The CBI maintains a public register for each type of Irish authorised hedge fund structure. This contains limited information on the name, the date of establishment, the AIFM and the depositary of the fund. Statutory filings and corporate information, including registered office address and details of the officers of the fund, are also publicly available from the relevant registrar of any Irish corporate fund.

All Irish hedge funds are required to obtain and hold information on the beneficial owners of shares, units and interests of a fund, as the case may be, and record these details in its internal beneficial ownership register. Certain beneficial ownership information must be provided to a publicly available central registrar to authorised officers of certain government, tax and law enforcement organisations, and designated persons (eg, financial institutions, accountants, auditors, tax advisers, legal professionals) who are required to conduct background information checks on individuals or entities with whom they enter into a financial transaction or a business relationship. Further to a ruling by the European Court of Justice regarding public access to beneficial ownership registers (ECJ No.188 of 2022), members of the public do not currently have access to beneficial ownership information in respect of ICAVs, unit trusts, ILPs and CCFs. However, members of the public are permitted to search the central register, which includes PLCs to see the number of beneficial owners recorded in respect of a PLC.

Failure to maintain and file the required beneficial ownership information with the relevant registrar is an offence, which may result in a fine on summary conviction of up to €5,000 or on conviction on indictment a fine of up to €500,000.

*Law stated - 01 May 2023*

### **Third-party investor liability**

In what circumstances (if any) would the limited liability of third-party investors in a hedge fund formed in your jurisdiction not be respected as a matter of local law?

Under common law, the limited liability of shareholders in a company may only be departed from in exceptional circumstances. For example, Irish courts will not permit the separate legal personality of a company and limited liability of shareholders to be used for a fraudulent, illegal or improper purpose.

Similar to other common law partnership structures, the Investment Limited Partnerships Acts 1994 and 2020 (the ILP Act) expressly provides that limited partners may lose their limited liability where they become involved in conducting or purporting to conduct the business of the ILP. To limit this risk, the ILP Act includes a non-exhaustive list of safe harbour activities that limited partners can carry out without losing their limited liability.

*Law stated - 01 May 2023*

### **Fund manager's fiduciary duties**

What are the fiduciary duties owed to a hedge fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction? To what extent can those fiduciary duties be modified by agreement of the parties?

Certain duties are owed by the directors of an Irish corporate fund and by the Irish management company or general partner in the case of non-corporate funds.

The fiduciary duties of directors of an Irish corporate fund are codified under the respective Irish governing legislation for this fund, namely Part 4 of the Irish Collective Asset-management Vehicles Act 2015 and Part 5 of the Companies Act 2014. These include the duty to:

- act in good faith, honestly and responsibly in relation to the conduct of the affairs of the fund, and in accordance with the constitutional document and applicable laws;
- exercise independent judgement and reasonable care, skill and diligence;
- avoid conflicts of interest; and
- have regard to the interests of investors.

Such directors are also subject to non-statutory common law fiduciary duties.

Funds established as unincorporated entities (ILPs, unit trusts and CCFs) do not have their own boards of directors. Where the manager or general partner (as applicable) of such a fund is an Irish corporate entity, its directors will be subject to the same fiduciary duties above.

Every Irish regulated AIF is also required to designate an AIFM. Where the relevant AIFM is authorised in the European Economic Area, it is required to adhere to certain general fiduciary principles in discharging its regulatory role and responsibilities, including acting in the best interests of each fund or the investors of each fund, and taking reasonable steps to avoid conflicts of interest.

The duties of the board of directors of the AIF and the AIFM cannot be amended by the constitutional document or otherwise disapplied.

*Law stated - 01 May 2023*

## Management liability and negligence

What standard of liability applies to the management of a hedge fund formed in your jurisdiction? Does your jurisdiction recognise 'gross negligence' (as opposed to 'ordinary negligence') in this regard?

The officers of the governing body of an Irish fund (ie, the board of directors of corporate funds or the Irish management company or general partner in the case of non-corporate funds) are subject to statutory liability in respect of any negligence, default, breach of duty or breach of trust.

Irish law-governed contracts providing for the management of an Irish AIF by an AIFM or investment manager typically apply 'ordinary negligence' but can apply a gross negligence standard of liability (albeit this would not be market standard).

The Irish courts have recognised 'gross negligence' in principle as involving 'a significant degree of carelessness' but

consider that the meaning is not clear and in a particular context is a matter for construction in the contract. Therefore, service providers seeking to apply a standard of gross negligence to matters that are not otherwise required by Irish law to adhere to a negligence standard (eg, contracts with a depository or an external valuer) should consider including a definition in the relevant contract.

*Law stated - 01 May 2023*

### **Governance and other special issues or requirements**

Are there any governance or other special issues or requirements particular to hedge fund vehicles formed in your jurisdiction (eg, restrictions on transfers and withdrawals, restrictions on operations generally, modifications to ensure fiscal transparency, special investor governance rights on matters such as removal of the manager or early termination of the vehicle, etc)? Does your jurisdiction impose any environmental, social and governance (ESG) obligations on hedge funds or their managers?

Each Irish hedge fund authorised as a QIAIF is subject to certain product-level investment restrictions and governance requirements of the CBI as set out in its AIF Rulebook and associated guidance.

For example, a QIAIF that pursues a strategy of investing more than 50 per cent of its net asset value in other investment funds may be subject to additional CBI requirements relating to the eligibility of an underlying fund. If the underlying fund is regulated, the prospectus of the underlying fund must be provided to the CBI, and the periodic report of the QIAIF must include the periodic report of the underlying fund. A QIAIF may disapply the eligibility requirement when investing more than 50 per cent of its net asset value in an unregulated underlying fund by imposing a minimum subscription of €500,000 and including detailed and prominent disclosure in the QIAIF prospectus on certain obligations and conditions that apply to the QIAIF and its AIFM but that do not apply to the underlying unregulated investment fund and its management company.

In addition to the CBI's regulatory requirements, Irish hedge funds are expected to adopt and comply with a corporate governance code for collective investment schemes and management companies (the Code) issued by Irish Funds, the representative body for the funds industry in Ireland. If an Irish hedge fund adopts the Code but decides not to apply a provision of the Code, it is recommended that the reasons for this are set out in the Directors' Report accompanying the annual audited accounts or are published through a publicly available medium (eg, website) referred to in such accounts.

Legislation introduced at European level (including the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation) in relation to environmental, social and governance matters, applies to all Irish hedge funds and AIFMs. This includes compulsory harmonised requirements in the areas of disclosure in fund documentation and classification of investments.

*Law stated - 01 May 2023*

### **Fund sponsor insolvency or change of control**

With respect to institutional sponsors of hedge funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the hedge fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the hedge fund's sponsor (eg, automatic trigger of dissolution or removal rights at fund level)?

There is no legal or regulatory requirement in Ireland for a hedge fund to have a sponsor. Notwithstanding this, many Irish funds do have a sponsor that will hold (directly or through an affiliate) one or more key service provider roles for the fund, typically the AIFM, general partner or investment manager. The consequence of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the sponsor will be determined by what (if any) key service provider role the sponsor group entity performs; the contractual provisions governing the appointment for such role; and whether the relevant sponsor group entity is authorised by the CBI. If the sponsor group entity is not acting as a service provider to the fund, the above events will not directly impact the fund from a regulatory perspective.

*Law stated - 01 May 2023*

## REGULATION, LICENSING AND REGISTRATION

### Principal legislation and regulatory bodies

What principal legislation governs hedge funds in your jurisdiction? Which regulatory bodies have authority over a hedge fund and its manager in your jurisdiction, and what are their audit and inspection rights?

A hedge fund established in Ireland is primarily governed by the legislation issued in respect of its legal form, as follows:

- the Irish Collective Asset-Management Vehicle Act 2015;
- the Companies Act 2014;
- the Investment Limited Partnerships Act 1994;
- the Unit Trusts Act 1990; and
- the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

It is also governed by the European Union (Alternative Investment Fund Managers) Regulations 2013 (the AIFM Regulations) and the AIF Rulebook issued by the Central Bank of Ireland (CBI).

The CBI is the regulatory body with supervisory authority over each fund and fund service provider established in Ireland. The audit and inspection rights of the CBI are derived from the AIFM Regulations and the Central Bank Act 1942 and allow the CBI to, among other things: carry out onsite inspections of the fund; request information, records, accounts or other documents; and require information related to the activities of the fund.

*Law stated - 01 May 2023*

### Reporting and disclosure requirements

What key reporting and disclosure requirements apply to hedge funds in your jurisdiction? (Include any notable requirements for initial and ongoing disclosures to both regulators and investors. Among other things, must the regulators be notified of the identity of investors and of any change in ownership, management or control of the fund?)

The offering and constitutional documents of an Irish hedge fund are subject to certain disclosure requirements pursuant to the AIF Rulebook issued by the CBI and the European Union (Alternative Investment Fund Managers) Regulations 2013. The offering documents must also be filed with and approved by the CBI as part of the initial authorisation of the fund and any changes to these documents thereafter must likewise be filed with the CBI.

The primary reporting requirements in respect of a hedge fund rest with the fund's designated alternative investment

fund manager (AIFM). An Irish hedge fund generally has limited direct reporting requirements: the main filings required are the annual audited accounts and monthly and quarterly returns of certain fund statistics with the CBI. Without prejudice to the obligation to notify the registrar in relation to changes to the beneficial ownership register of the fund, there is no requirement to notify the CBI of the identity of investors or any change in ownership or control of the fund. Any change in management of the fund, either as a change in the board of directors of the fund or a change in the AIFM, general partner or investment manager, requires engagement with the CBI and clearance or approval, as the case may be, by the CBI.

*Law stated - 01 May 2023*

### **Fund licensing and registration**

What regulatory approval, licensing or registration requirements apply to hedge funds in your jurisdiction (eg, is the fund required to register as an investment company, mutual fund, etc)? Does it make a difference whether there are significant investment activities in your jurisdiction?

Every Irish hedge fund is required to be authorised by the CBI, irrespective of the level of investment activity proposed. Substantially all Irish hedge funds seek authorisation as a qualifying investor alternative investment fund. A hedge fund may alternatively be formed in Ireland as a retail investor alternative investment fund and permit investment by both qualifying investors and non-professional investors.

*Law stated - 01 May 2023*

### **Fund manager registration**

Is a hedge fund's manager – or any of its officers, directors or control persons – required to register as an investment adviser in your jurisdiction?

An AIFM established in Ireland is required to be authorised by the CBI and the appointments of directors and certain key staff to this entity are subject to CBI approval. A non-Irish AIFM authorised within the European Economic Area is required to passport its services into Ireland to act for an Irish hedge fund.

The investment management function in respect of an Irish hedge fund may only be delegated by the AIFM, or carried out directly by a non-EU AIFM, where the relevant delegate or non-EU AIFM is (1) authorised or registered for the purpose of asset management and subject to prudential supervision, and (2) cleared by the CBI. The clearance process differs depending on whether the eligible entities are located within or outside the European Economic Area.

Individual officers, directors and control persons of non-Irish entities that are seeking to act as an AIFM or an investment manager to Irish funds are not subject to registration with the CBI.

*Law stated - 01 May 2023*

### **Fund manager qualifications and other requirements**

Does your jurisdiction impose any specific qualifications or other requirements on a hedge fund's manager or any of its officers, directors or control persons (eg, minimum capital requirements, years of experience, etc)?

An AIFM established in Ireland is required to have a minimum of two Irish resident directors and suitably qualified staff to perform certain managerial functions. The directors and in-scope staff are required to obtain fitness and probity

clearance but are not subject to any requirement to hold specific qualifications for their roles. Non-Irish AIFMs established and authorised within the European Economic Area are not subject to Irish fitness and probity requirements.

Where the investment management and advisory function in respect of a fund is to be delegated by the AIFM to an entity from outside the European Economic Area, the CBI will, as part of the application for clearance to act as investment manager or adviser to the Irish fund, seek details of its track record in the investment management of investment funds, focusing on asset types, investment strategies, economic sectors and jurisdictions. If an investment manager has no track record in the investment management of funds, detailed curricula vitae are required to demonstrate the expertise of the key individuals, directors and senior management of the firm. There are no minimum years of experience or minimum capital required and the CBI assessment will be based on the circumstances of the applicant and mandate involved.

*Law stated - 01 May 2023*

### **Political contributions**

Are there any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a hedge fund's manager or investment adviser or their employees (ie, 'pay to play' restrictions)?

Yes. A limit of €1,000 applies to political donations to an individual and a limit of €2,500 applies to political donations to a political party in Ireland. Political donations, the value of which exceeds €200, by a corporate donor are restricted unless the corporate donor is entered in the Register of Corporate Donors maintained by the Standards in Public Office Commission in Ireland.

*Law stated - 01 May 2023*

### **Use of intermediaries and lobbyist registration**

Are there any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a hedge fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities? Are there any rules that require a fund's investment adviser or its employees and agents to register as lobbyists (or similar persons) in the marketing of the fund to public pension plans and governmental entities?

Yes. Lobbying in Ireland is permitted subject to compliance with the Regulation of Lobbying Act 2015 . Generally, lobbying involves communications with a designated public official in relation to the initiation, development or modification of a matter of public policy or a public programme, or the preparation or amendment of any law, other than in relation to its implementation. Lobbyists are required to register with the Standards in Public Offices Commission in Ireland and to provide information periodically about their lobbying activities, including, in the case of professional lobbyists, information about their clients.

Marketing of a hedge fund to public pension plans and governmental entities is not subject to any specific marketing rules or regulations and the general marketing rules and regulations for funds under Irish law apply.

*Law stated - 01 May 2023*

## Anti-money laundering regulations

What anti-money laundering rules and requirements apply to hedge funds in your jurisdiction (eg, requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a hedge fund or the individual members of the sponsor)?

Ireland has implemented European anti-money laundering and counter financing of terrorism (AML/CFT) legislation, which requires, among other things, a regulated fund to take certain measures to detect and to seek to prevent the use of the fund for money laundering or the financing of terrorist or criminal activities. The key AML/CFT legislation in Ireland is the Criminal Justice Act 2010–2021 (CJA). There are also best practice guidelines issued by the CBI that provide further guidance on how a regulated fund should comply with the obligations contained in the CJA.

The primary AML/CFT obligations of a fund relate to due diligence, account monitoring and screening, record-keeping and suspicious transaction reporting. Due diligence must be conducted by the fund on each investor, to ascertain and verify the identity of investors (and if applicable, each beneficial owner), prior to any transactions with an investor.

Details of a beneficial owner must be notified to the registrar of beneficial ownership information and this information is accessible to designated persons (eg, financial institutions, accountants, auditors, tax advisers, legal professionals) due to the proposed entry into a financial transaction or a business relationship), and authorised officials of certain government, tax and law enforcement organisations. Save for the foregoing, there are no public disclosure or access requirements in respect of the identities of the investors in a fund or the individual members of a sponsor.

*Law stated - 01 May 2023*

## Data security and privacy regulations

What data security or privacy rules and regulations apply in your jurisdiction regarding the protection and handling of private data about a hedge fund or its investors?

The key legislative framework in Ireland for data security and privacy of fund and investor data is the General Data Protection Regulation (GDPR) and the Data Protection Acts 1988 to 2018 (DPA). The GDPR governs the collection, storage and processing of personal data by, among others, an Irish domiciled fund. The DPA gives further effect to and supplements certain provisions of GDPR in Ireland.

The primary data protection rules focus on the data of natural persons and there is no distinction on the capacity of such persons as investor, officer or service provider of the fund. Data relating to a fund, its service providers and investors that does not constitute personal data and is not in the public domain is typically subject to strict confidentiality obligations.

In relation to data security, the CBI has issued cross-industry guidance in respect of information technology and cybersecurity risks, outsourcing, and operational resilience.

Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) came into force on 16 January 2023 and will apply from 17 January 2025. DORA applies to fund service providers and sets out new obligations for these entities aimed at consolidating ICT risk requirements and preventing cyber-attacks.

*Law stated - 01 May 2023*



## TAXATION

### Hedge fund structuring

What tax considerations are relevant to the form of organisation and initial structuring of a hedge fund in your jurisdiction?

The Irish tax treatment of hedge funds established in Ireland will differ depending on the legal form of the fund. Irish collective asset-management vehicles (ICAVs), investment companies (PLCs) and unit trusts that are resident in Ireland for tax purposes are taxed as investment undertakings and are effectively exempt from tax in Ireland. Investment limited partnerships (ILPs) and common contractual funds (CCFs) are treated as tax transparent entities for Irish tax purposes and are therefore not subject to tax at the level of the ILP or the CCF in Ireland.

*Law stated - 01 May 2023*

### General tax liabilities and available exemptions

Is a hedge fund vehicle formed in your jurisdiction subject to taxation there with respect to its income or gains? Is the fund required to withhold taxes with respect to distributions to investors? Under what conditions may a hedge fund qualify for applicable tax exemptions?

ICAVs, PLCs and unit trusts are, broadly, not subject to tax in Ireland on any income or gains they realise from their investments. There are no Irish withholding taxes in respect of distributions, redemptions or transfers of shares or units (a chargeable event) by or to non-Irish investors if certain conditions are met. In particular, non-Irish resident investors and certain exempt Irish investors must provide the appropriate Irish Revenue-approved declaration to the fund for this exemption to apply.

For the purposes of Irish taxation, the income and gains of an ILP and a CCF are treated as arising to the investors in accordance with, respectively, the apportionment under the limited partnership agreement or the proportion to the value of the units beneficially owned by them. Such investors would be taxed as if the income or gains had arisen to the relevant investors directly without passing through the hands of the ILP or the CCF.

Specific rules apply with respect to funds that invest in Irish real estate and related assets. These rules can impose withholding tax on events including distributions to investors.

Ireland has implemented the United States Foreign Account Tax Compliance Act regime (FATCA), the Organisation for Economic Co-operation and Development common reporting standard (CRS) and Council Directive (EU) 2018/822 on mandatory disclosure for cross-border transactions. Irish funds are therefore required to comply with international FATCA and CRS requirements.

*Law stated - 01 May 2023*

### Local taxation of non-resident investors

Are non-resident investors in a hedge fund subject to taxation or return-filing requirements in your jurisdiction?

Non-Irish resident investors in an ICAV, a PLC or a unit trust will generally not be chargeable to Irish tax on distributions or redemptions in respect of their shares or units provided that the fund:

- is in possession of a completed non-resident declaration in respect of that investor; or



- has received written approval from the Irish Revenue Commissioners to the effect that the requirement to provide a non-resident declaration is deemed to have been complied with in respect of that investor. To be entitled to apply for this approval, a fund must not actively promote its units to Irish investors or in Ireland and this must be reflected in the fund's subscription documents.

Non-Irish resident investors in an ILP and a CCF should not be subject to Irish taxation in respect of any investment income or gains arising or accruing from sources outside Ireland.

Non-Irish resident investors are not generally required to file any tax returns in Ireland merely by reason of holding an investment in an Irish fund.

*Law stated - 01 May 2023*

### **Local tax authority ruling**

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a hedge fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

Ireland does not operate a system of rulings. The tax treatment is based on clear tax legislation.

Irish resident (non-exempt) investors in an ICAV, a PLC or a unit trust will be liable to tax on the happening of a chargeable event. This tax is generally collected by the fund on behalf of the investors and paid to the Irish Revenue Commissioners. The rate of withholding is generally 41 per cent (or 25 per cent in the case of corporate shareholders). Certain classes of Irish resident investors will be exempt from Irish tax and the related withholding.

Irish resident investors in an ILP or a CCF will be subject to tax in Ireland on the profits, income or gain which accrue to them based on their Irish tax status.

*Law stated - 01 May 2023*

### **Organisational taxes**

Must any significant organisational taxes be paid with respect to hedge funds organised in your jurisdiction?

A corporate fund, namely an ICAV or a PLC, will be required to register for pay as you earn (PAYE) tax if it is making payments directly to directors or employees, and must account for Irish income tax through the PAYE system with respect to such payments.

The activities of fund entities are generally considered to be exempt in Ireland from value added tax (VAT). However, a fund may be required to register and account for Irish VAT with respect to non-exempt services received from outside Ireland under the EU reverse charge regime.

*Law stated - 01 May 2023*

### **Special tax considerations for sponsors**

What special tax considerations (if any) are relevant with respect to a hedge fund's sponsor (eg, taxation of incentive compensation, management fees, etc)?

The provision of certain standard services to Irish funds (eg, investment management, administration, transfer agency, depositary services where not purely safekeeping) are treated as exempt from VAT in Ireland.

The direct Irish tax treatment of incentive compensation or management fees will only be relevant where the sponsor or management entity is an Irish resident or acting through a branch or agency in Ireland. Irish-based executives or managers holding interests in an ILP will be subject to tax on any such income in the normal way, depending on residency and other factors. Ireland has limited legislation on the taxation of 'carried interest'.

*Law stated - 01 May 2023*

## **Tax treaties**

Are there any relevant tax treaties to which your jurisdiction is a party? How do such treaties apply to hedge fund vehicles?

Ireland has signed double tax treaties with 76 countries, of which 74 are in effect.

Depending on its legal form and wider structuring considerations, an Irish fund may be entitled to benefit from the provisions of Ireland's double tax treaties, subject to the provisions of each treaty and the rules in the relevant treaty partner country in each case.

ILPs and CCFs are not generally able to claim the benefit of Ireland's network of double tax treaties. Investors in ILPs and CCFs may be able to access the double tax treaty in place between their home jurisdiction and the jurisdiction where the assets are located and may be able to benefit from reduced withholding tax rates or to reclaim withholding taxes suffered in particular countries on that basis.

*Law stated - 01 May 2023*

## **Other significant tax issues**

Are there any other significant tax issues relating to hedge funds organised in your jurisdiction?

There are specific rules that apply to ICAVs, PLCs and unit trusts that hold Irish real estate assets and related assets (termed Irish real estate funds). These rules can impose withholding tax on events including distributions to investors.

Ireland has enacted legislation imposing tax on ILPs and CCFs, which are treated as 'reverse hybrid' entities. This is relevant where an investor treats such a fund as a corporate entity rather than a tax transparent entity. Where the rules apply, the ILP or CCF can become subject to corporation tax in Ireland.

*Law stated - 01 May 2023*

## **OFFERING, SELLING AND TRADING RESTRICTIONS**

### **Marketing restrictions**

What principal legal and regulatory restrictions apply to offers and sales of interests in hedge funds formed in your jurisdiction, including the type of investors to whom such funds (or hedge funds formed in other jurisdictions) may be offered without registration under applicable securities laws (eg, private placement restrictions)?

Hedge funds are not permitted to be offered to investors in Ireland without completion of the applicable notification or registration requirements, unless the offer and sale is the result of enquiries made at the exclusive initiative of the investor in Ireland (commonly referred to as 'reverse enquiry'). The European Union (Alternative Investment Fund

Managers) Regulations 2013 is the key legislation governing the offer and sale of hedge funds in Ireland. An alternative investment fund manager (AIFM) is required to make certain notifications to the applicable European competent authority in respect of marketing and, where applicable, pre-marketing of a hedge fund to eligible investors.

Hedge funds are primarily offered to professional investors. Certain hedge funds may also permit investment by non-professional investors. A hedge fund that is to be offered to non-professional investors in Ireland must comply with the Central Bank of Ireland (CBI) registration requirements, and the relevant provisions of the AIF Rulebook and the Consumer Protection Code of the CBI.

*Law stated - 01 May 2023*

### **Investor restrictions**

Are there any restrictions on the types and number of investors that may participate in hedge funds formed in your jurisdiction (other than those imposed by applicable securities laws)?

A hedge fund formed in Ireland is typically authorised as a qualifying investor alternative investment fund, which restricts investment to investors who (1) meet the qualifying investor criteria outlined in the AIF Rulebook issued by the CBI and (2) make a minimum investment of €100,000.

A common contractual fund typically restricts its availability to non-natural person institutional investors to preserve its Irish tax transparent status.

There are no restrictions on the number of investors permitted in a hedge fund in Ireland.

*Law stated - 01 May 2023*

### **Bank participation**

Are there any legal or regulatory restrictions that specifically affect banks with respect to investing in or sponsoring hedge funds?

There are no Irish legal or regulatory restrictions on a bank sponsoring a hedge fund. Investment in Irish hedge funds by a bank may have an impact on its regulatory capital requirements under its applicable regulatory regime.

*Law stated - 01 May 2023*

### **Trading activities**

Are there any regulatory restrictions or disclosure obligations with respect to a hedge fund's trading activities? (What is the regulatory regime applicable to short sales, swaps, options, futures and other derivative and commodity contracts, and digital assets?)

Hedge funds in Ireland are subject to the disclosure and reporting requirements of in-scope financial instruments under the European Market Infrastructure Regulation and the Securities Financing Transactions Regulation.

Hedge funds are in general not subject to any restrictions on trading activities, provided that the investment strategy is compliant with the general rules of the fund regime as set out in the AIF Rulebook issued by the CBI.

Notwithstanding the above, where an Irish hedge fund proposes to invest in a novel asset class, the CBI will require prior review and approval of the proposal. For example, while the CBI has recently approved the first Irish hedge funds to take exposure to digital assets, it is currently still assessing other proposed digital asset exposures on a case-by-

case basis.

*Law stated - 01 May 2023*

### Side letters

Are hedge funds or their general partners permitted to enter into side letters with investors? Are there any limits on the contents of side letters (eg, more favourable fee, liquidity, transparency or other terms)?

Side letters with investors are permitted, subject to compliance with the disclosure and reporting requirements under the European Union (Alternative Investment Fund Managers) Regulations 2013. Preferential treatment may be granted to an investor in a side letter provided the fund documentation discloses (1) a description of that preferential treatment, (2) the type of investors who obtain such treatment and, where relevant, (3) the legal or economic links with the fund or the AIFM. There are no limitations under Irish law on the terms of side letters for lawful purposes.

*Law stated - 01 May 2023*

## LIQUIDITY TERMS

### Redemptions

Are there any regulatory or other limitations on hedge funds' liquidity terms? Are there any limits on lock-up periods, frequency of redemption dates or length of redemption notice? Are withdrawal 'gates' permissible? Are 'side pockets' permitted? Can different liquidity terms be offered within the same hedge fund structure?

A hedge fund may be established as open-ended; open-ended with limited liquidity; or closed-ended.

Open-ended funds must offer redemption at least quarterly, and the period between an investor submitting a redemption request and receiving redemption proceeds generally must not exceed 90 days. Open-ended with limited liquidity or closed-ended funds are not subject to any regulatory parameters in terms of dealing frequency or minimum redemption quotas.

Withdrawal or redemption gates can be applied to open-ended funds. A 10 per cent gate can be applied to monthly dealing funds and a 25 per cent gate can be applied to funds dealing less frequently than monthly. There are no limits on the use of gates by open-ended with limited liquidity funds.

Side pockets are permitted for assets that have become illiquid or difficult to value. Assets that were illiquid or hard to value at the time of purchase can also be placed in a side pocket for open-ended limited liquidity and closed-ended funds.

A fund can offer different liquidity terms subject to adherence to the overall principle of fair treatment of investors.

*Law stated - 01 May 2023*

### Suspensions

Are there any legal or regulatory issues associated with a suspension of redemptions, payment of redemption proceeds or net asset value?

Yes. A fund is required to disclose in the fund documentation the circumstances where redemptions, settlement or

valuation of the net asset value may be suspended. The Central Bank of Ireland must be informed of a suspension of the net asset value immediately, and in any event within the working day on which such suspension took effect.

*Law stated - 01 May 2023*

### **In-kind distributions**

Are there any legal or regulatory limitations or disclosure issues related to a hedge fund's ability to make in-kind distributions to its investors?

Yes. In-kind redemptions to investors of open-ended Irish hedge funds are at the discretion of the fund and are subject to the consent of the relevant investor if the redemption in respect of such investor represents less than 5 per cent of the net asset value of the fund. The depositary of the fund is required to provide prior approval of the proposed asset allocation for the in-kind redemption and be satisfied that no material prejudice to investors is likely to arise. Redeeming investors are not required to accept an in-kind redemption and may direct that the fund sell the assets, with the costs of such sale charged to the investor.

*Law stated - 01 May 2023*

## **UPDATE AND TRENDS**

### **Recent trends and developments**

What are the most significant recent trends and developments relating to hedge funds in your jurisdiction? What impact do you expect such trends and developments will have on global hedge fundraising and on hedge funds generally?

The hedge funds industry in Ireland has embraced the objectives of sustainable investment and the implementation of legislation relating to sustainable finance and environmental, social and governance (ESG) matters (commonly known as the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation). Hedge funds and their sponsors continue to dedicate significant time and resources to ESG matters with a notable trend in the increase of downgrades in the SFDR classification for funds, which indicates the sustainability profile of a fund, from 'Article 9' (dark green) to 'Article 8' (light green), due in part to the challenges arising from feedback from European regulatory authorities that all of the investments held by an Article 9 fund should be sustainable, and the complexities involved in a sustainability assessment.

In April 2023, the Central Bank of Ireland (CBI) published a new Question and Answers for alternative investment funds (AIFs) that increased the limit for a a qualifying investor alternative investment fund (QIAIF) seeking indirect exposure to digital assets without prior CBI clearance. Subject to compliance with certain CBI risk, liquidity and prospectus disclosure requirements, where a QIAIF is structured as open-ended, it can gain indirect exposure to digital assets of up to 20 per cent of its net asset value and where structured as closed-ended or open-ended with limited liquidity, it can gain indirect exposure to digital assets of up to 50 per cent of its net asset value.







Fundraising efforts for hedge funds in Ireland and across Europe continue to improve as investors are more familiar with the harmonised ESG disclosure templates and may compare funds in line with their ESG preferences. The continued growth of digital assets, and the introduction of a new regulatory framework for European crypto-assets known as the Markets in Crypto-Assets (MiCA) Regulation, will also contribute to hedge fund product structuring for European investors.

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*Law stated - 01 May 2023*

## Jurisdictions

	<b>Hong Kong</b>	Sidley Austin LLP
	<b>Ireland</b>	Maples Group
	<b>Singapore</b>	Sidley Austin LLP
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>United Kingdom</b>	Sidley Austin LLP
	<b>USA</b>	Sidley Austin LLP