

European Alternative Investments for Japanese Investors – The Irish Unit Trust

Japanese institutional investors are increasingly looking to Ireland for fund structuring solutions when seeking exposure to alternative assets in Europe such as private equity, infrastructure, real estate, private debt and venture capital ("European Alternative Investments"). In Ireland, the legal structure of choice for Japanese promoters continues to be the unit trust vehicle.

An Irish unit trust may be authorised with the Central Bank of Ireland (the "Central Bank") as either an undertaking for collective investment in transferable securities ("UCITS") or a qualifying investor alternative investment fund ("QIAIF"), pursuant to the Alternative Investment Fund Managers Directive ("AIFMD") and local implementing regulations.

Japanese institutional investors have found that an Irish unit trust structured as a QIAIF has the ability to accommodate the range of European Alternative Investments they are seeking to allocate capital towards.

QIAIFs are generally not subject to any regulatory, investment or borrowing restrictions and can facilitate the widest range of investment strategies. They are therefore ideally suited to obtain exposure to European Alternative Investments. In terms of liquidity, a QIAIF can be open-ended, open-ended with limited liquidity or closed-ended.

Key Features of an Irish Unit Trust

Unit trusts in Ireland are established pursuant to the Unit Trusts Act 1990 and are very similar in nature to the domestic Japanese trust. A unit trust is constituted by way of a

trust deed entered into between a management company (in the case of a unit trust structured as a QIAIF, an alternative investment fund manager ("AIFM")) and an Irish regulated depositary which acts as trustee. The AIFM is responsible for ensuring compliance by the unit trust with the requirements under AIFMD. Subject to compliance with certain requirements, the AIFM can fully delegate investment discretion to an overseas investment manager.

Unlike traditional trust structures which vest the powers of the trust exclusively in the trustee, the powers of the Irish unit trust are split between the AIFM and the trustee, with ultimate management authority held by the board of directors of the AIFM. Accordingly, the AIFM and each of its directors must also be authorised and approved by the Central Bank. There are a number of service providers in the market, including the Maples Group, that are able to offer AIFM services to clients.

Investing through a Subsidiary

When considering investments in European Alternative Investments, it can sometimes be beneficial to Japanese investors to establish an Irish company (Special Purpose Company ("SPC")) through which the Irish unit trust will invest. There are a range of options for establishing such an SPC. Typically, it is established either as a private limited company or as a designated activity company and can be structured in a tax efficient manner, to act as a 'liability blocker' by interposing a separate legal entity between the unit trust and underlying investments, in order to limit the AIFM's

personal liability. This is particularly important if the unit trust will invest in private funds to gain exposure to the European Alternative Assets.

A QIAIF unit trust structure investing through an SPC is very similar in nature to the "PE Type Unit Trust", which is a very popular tried and tested Cayman Islands structure among Japanese investors seeking exposure to alternative assets globally (for further details on the Cayman Islands regime, please see our previous article¹).

Tax Considerations

Unit trusts also have the ability to 'check the box' and be treated as a pass-through entity for US federal tax purposes.

European Alternative Investment Asset Classes

While an Irish unit trust paired with an SPC is suitable for gaining exposure to the full range of European Alternative Investments, one particular trend that we are now witnessing is the use of such structure to obtain exposure to infrastructure, particularly infrastructure debt in the form of loans, bonds, swaps and notes, which is seen by many Japanese investors as capable of providing a steady and attractive yield.

Conclusion

We are seeing an increasing trend among Japanese institutional investors towards the use of Irish QIAIF unit trusts as they seek increased exposure to European Alternative Investments. The Maples Group is able to provide legal advice and ancillary services to the full range of structures referred to in this update. If you have any questions on the Irish unit trust, SPCs or any other structures referred to herein, please liaise with the persons listed below or your usual Maples Group contact.

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¹ <https://maples.com/en/knowledge-centre/2019/4/rise-of-the-private-equity-type-unit-trust>