

**COLLECTIVE INVESTMENT
SCHEMES IN IRELAND**

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1. **INTRODUCTION**

Ireland has become an extremely attractive location for the domiciling of funds and for fund management operations because of the Irish Government's progressive attitude towards this highly specialised area of financial services.

A package of fiscal and legal measures has been developed by the Irish Government to facilitate fund management projects situated in both Dublin's International Financial Services Centre (the "IFSC") and Shannon Airport's Free Trade Zone.

There is now no doubting Ireland's suitability for the domiciling of funds and for fund management operations: it was one of the first EU states to implement the UCITS Directive; it is an economically and politically stable country; it has a proactive financial services legal regime which has enacted six statutes in recent years to accommodate the evolving needs of financial institutions; funds can be easily switched and moved; and both the human and technological infrastructure are well-established. In essence, the Irish fiscal, legal and structural environment is positive for the investor, the promoter and the manager from both a regulatory and operational perspective.

The strongest stimulus for the domiciling of funds and for fund management in Ireland has been the establishment of the IFSC in Dublin's Custom House Docks. The IFSC, which is established under legislation enacted in 1987, has attracted worldwide interest. Banks, fund managers and insurance operations from around the world have now established there. The tax exemption of Irish domiciled public collective investment schemes administered from the IFSC is seen as particularly attractive. The IFSC has become a financial services centre of global significance initially because of the attractive taxation and other fiscal benefits which were available to entrants but, latterly, because of the availability of a young, well-educated workforce, sophisticated telecommunications systems and highly skilled professional service providers.

2. FORM OF COLLECTIVE INVESTMENT SCHEMES

The principal forms of collective investment scheme ("Scheme(s)") under management in the IFSC are UCITS Schemes constituted in the form of unit trusts and investment companies with variable share capital, non-UCITS Schemes constituted in the form of unit trusts or investment companies with variable share capital, private Schemes and investment limited partnerships.

UCITS

Ireland was one of the first EU Member States to implement the EU Directive on Undertakings for Collective Investment in Transferable Securities (UCITS) (Directive 85/611/EEC). It was implemented in Ireland on 1st June 1989 by virtue of the European Communities (UCITS) Regulations, 1989 (Statutory Instrument No.78 of 1989) (UCITS Regulations). UCITS are open-ended Schemes having as their sole object the collective investment of capital (raised from the public) in transferable securities which operate on the principle of risk-spreading. These securities are normally listed securities. UCITS may be constituted as unit trusts or as public limited investment companies with fixed or variable share capital. The Directive provides for the granting of full legal recognition in all Member States for UCITS which have been registered and properly constituted in any one Member State. Thus, Schemes located in Ireland may be operated in all EU Member States without the need for further authorisation and subject only to local marketing regulations.

Non-UCITS Unit Trusts

A unit trust scheme is defined by the Unit Trusts Act, 1990 (the principal legislation in relation to unit trusts in Ireland) as "any arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever". Unit trusts may be closed ended or open ended.

Non-UCITS Investment Companies

Part XIII of the Companies Act, 1990 (as amended) provides for the incorporation of non-UCITS open ended investment companies with variable capital and closed ended investment companies with variable capital whose sole object is the collective investment of their funds in property with the aim of spreading investment risk and giving their members the benefit of the results of the management of their funds. Before such an investment company can raise capital by promoting the sale of its units to the public, it must have been designated by the Central Bank as a "designated company".

Investment Limited Partnerships

The Investment Limited Partnerships Act, 1994 permits the creation of a limited partnership structure as an investment vehicle. As a tax transparent vehicle it has many uses and is particularly suitable as an investment vehicle for investment in US securities with US advisers. A dedicated brochure dealing with the form, regulation and tax aspects of investment limited partnerships is available on request from A&L Goodbody.

Private Collective Investment Schemes

A number of alternative corporate structures are commonly used in the IFSC for private fund management. Individual structures can be constructed to meet the needs of individual fund management operations.

3. REGULATORY AUTHORITIES

Central Bank

The Central Bank of Ireland (the "Central Bank") is the principal regulatory authority in the Irish financial system. It regulates banks, building societies, providers of investment services as well as futures and options exchanges. The Central Bank is relevant for establishing funds and for fund management operations in a number of ways. Firstly, the Central Bank is the competent authority in Ireland for the purposes of the regulation of UCITS Schemes and all non-UCITS Schemes. Secondly, the Central Bank is the supervisory authority for the authorisation and regulation of providers of investment services in Ireland which services include the giving of investment advice, the provision of fund administration and custodial services and receiving, transmitting and executing orders relating to securities. Thirdly, the Central Bank is also the general regulator of activities in the IFSC.

Government

The Department of Enterprise, Trade and Employment, a department of the Irish Government, plays a part in the regulation of fund management in Ireland especially in its role as the regulatory authority of insurance activities in Ireland. Another Government Department, the Department of Finance, also plays a role in fund management in that it alone has the power to issue tax certificates for operations in the IFSC.

IDA Ireland

The Industrial Development Agency of Ireland (the "IDA") is the State body charged with the task of attracting industry to Ireland. Specifically, it has been appointed as the marketing agency for the IFSC. It is important to stress that while it is not a regulatory body, it does play a part in the establishment process in the IFSC in that all applications for approval to operate in the IFSC must first be made to the IDA. If the IDA is happy with the applicant and its business plan, the IDA will "run with" the application on behalf of the applicant before the Certification Advisory Committee (CAC).

Certification Advisory Committee

The CAC whose members comprise representatives from government departments, the Central Bank and the IDA, is the body which formally considers the application to operate in the IFSC. If the CAC recommends approval, the tax certificate granting the 10% tax rate to service providers to Schemes will be issued by the Department of Finance.

Dublin Docklands Development Authority

The Dublin Docklands Development Authority was established by the Irish Government. It is the successor to the Custom House Docks Development Authority which was established to develop the site on which the IFSC is located and which published a plan for the IFSC in 1987. Over 1,000 projects have now been licensed to operate in the IFSC. The new Authority's brief has been extended to cover a considerable part of Dublin's docklands.

Irish Stock Exchange

The Irish Stock Exchange Limited is the regulatory authority of the Irish Stock Exchange and the stockbrokers who are members of the Exchange. It is possible to list the units or shares of Schemes on the Exchange. An application for listing must be submitted to the Exchange by a sponsoring stockbroker and requires the preparation of a prospectus constituting listing particulars for the Scheme. The Irish Stock Exchange Limited must be satisfied that this document complies with its requirements for listing Schemes on the Exchange.

4. ESTABLISHING FUND MANAGEMENT OPERATIONS IN THE IFSC

Fund management operations wishing to avail of the reduced rate of corporation tax of 10% on their income must be the holder of a tax certificate and are required to operate from the IFSC. Generally, the 10% rate of corporation tax applies in respect of income arising up to 31st December, 2005 in respect of fund management operations approved prior to 31st May, 1998.

It should be emphasised that it is no longer possible to establish a “stand alone” fund management operation that can avail of the reduced rate of corporation tax of 10% as quota restrictions which came into operation on 2nd July, 1998 have now been filled.

It is still possible to obtain an IFSC Certificate where the fund manager does not intend itself to physically locate within the IFSC and commit itself to employing persons in Ireland ("agency fund manager"), provided that such fund manager employs a third party fund administrator operating from the IFSC to provide the relevant services. Such fund management operations will normally be established to improve branding of Schemes and to take advantage of a reduced rate of corporation tax of 12½% (currently 24% but 20% from 1st January, 2000) for any fee income payable to the management entity. There are no quota restrictions on the number of tax certificates which may be issued to agency fund managers.

The first step in the process is to make an application to the IDA. The application should contain the following information:

- the name of the promoters of the proposed project
- details of the proposed activity
- marketing information and plans
- financial and capital structures
- profit and loss and balance sheet projections
- details of displacement in the case of entities already based in Ireland; and
- an assessment of the contribution of the proposed operation to the Irish economy.

The application or a summary of it is submitted by the IDA to the Certification Advisory Committee (“CAC”) who approve the application. The tax certificate is formally issued by the Minister for Finance some time later though the benefit of the reduced tax on income applies from the date of the CAC approval or the date of commencement of operations, if later.

While a fund manager may appoint an investment adviser who is not Irish to a Scheme, certain administrative functions must be carried on within the IFSC by the fund management company or, where such company does not have the capability, a third party fund manager/administrator operating from the IFSC. These minimum administrative functions include the calculation of a Scheme's net asset value and dealing price, calculation of income and expenses accruals, maintenance and servicing of all accounting records relating to Schemes, maintenance and servicing of shareholders/unitholders records and the origination and retention of all correspondence with shareholders/unitholders including completed application forms.

5. APPROVAL OF PROMOTER AND AUTHORISATION OF PUBLIC COLLECTIVE INVESTMENT SCHEMES

In order to establish a UCITS or a non-UCITS Scheme in Ireland, application must firstly be made to the Central Bank using the Bank's prescribed form for the approval of the promoter of the Scheme. The application form requires the following information:

- details of all shareholders holding directly or indirectly shares or other interests representing 10% or more of the capital or voting rights of the promoter and audited accounts of such entities;
- details of the activities of the promoter, its countries of operation and expertise in the promotion and management of collective investments schemes;
- value of assets under management of the promoter in collective investment schemes and non-collective investment schemes;
- latest audited accounts of the promoter;
- details of regulatory status of the promoter together with appropriate contact names;
- details of Irish service providers to the proposed Scheme;
- details of the types of Schemes which it is intended to promote and the manner of distribution.

Where the promoter intends to establish a management company, a separate application should also be made to the Central Bank which requires details of its incorporation, direct shareholders and ultimate parent, directors, auditors, year end accounting date, bankers, legal advisors and money laundering reporting officer.

Any application will be treated by the Central Bank as being confidential.

Generally the Central Bank will only review and approve the documentation for the Scheme once the promoter has been approved.

As indicated in Chapter 2, a public Scheme domiciled in Ireland may be constituted either as a unit trust or as an investment company incorporated in Ireland as a public limited company.

If constituted as a unit trust, the Scheme must act through a fund management company which must be incorporated in Ireland. Such a management company must also be approved by the Central Bank which will require that it has a minimum level of financial resources equivalent to IR£100,000 or three months expenditure, whichever is greater.

An investment company may establish a management company for those reasons indicated in Chapter 4. If an investment company chooses not to utilise such a management company then it must have a minimum paid-up share capital of IR£100,000 or its equivalent in foreign currency, within three months of authorisation.

A minimum of two directors of a management company and a minimum of two directors of an investment company must be Irish residents. Appointments to the board of directors must be approved by the Central Bank and departures from the office of director must be notified to the Central Bank immediately. The board of directors of the management company should not have directors in common with the board of directors of the trustee/custodian of the Scheme for which it acts. Approval of the Central Bank is required in respect of any proposed change in ownership or in significant shareholdings of a management company. A significant shareholding for these purposes is defined as a shareholding of 10 per cent or more.

A management company is not permitted to manage non-Irish Schemes.

Public Schemes must appoint a trustee/custodian to safeguard their assets. Only credit institutions licensed in Ireland, their branches or subsidiaries (provided the subsidiaries have been guaranteed) or IFSC companies which are subsidiaries of, and guaranteed by, appropriate credit institutions, may be trustees/custodians. A trustee may not be replaced without the approval of the Central Bank.

6. SUPERVISION OF COLLECTIVE INVESTMENT SCHEMES

The Central Bank has published guidelines for both UCITS and non-UCITS Schemes which detail the Bank's supervisory requirements in relation to the Schemes and the service providers to the Schemes. The Central Bank also publishes guidance notes from time to time which are intended to assist in the interpretation of their requirements.

UCITS

A UCITS must at all times comply with the UCITS Regulations. The Central Bank closely monitors Schemes. It has bi-annual review meetings with the management of the investment company or the management company, and the trustee/custodian. A management company or investment company must always have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities. The Central Bank must approve any replacement of the management company or the trustee/custodian and any amendment to the prospectus and the trust deed or articles of association. The Central Bank must also be informed of matters on an on-going basis. A copy of the UCITS' prospectus (and any amendments made to it), its monthly, half-yearly and annual reports must be sent to the Central Bank. A UCITS must inform the Central Bank when it intends to:

- suspend temporarily the repurchase or redemption of its units;
- employ techniques and instruments relating to transferable securities for the purposes of efficient portfolio management or for protection against exchange risk; or
- market its units in other EU member states.

The Central Bank is entitled to monthly reports from a UCITS. These monthly reports must include details of:

- the total gross asset value of the UCITS at month-end;
- the total net asset value of the UCITS at month-end;
- the number of units in circulation at the month-end;
- the net asset value per unit at the month-end;
- net proceeds from the issue of units during the month;
- payments made for the repurchase of units during the month; and
- the net issues and net repurchases during the month.

These reports must be submitted to the Central Bank within 20 working days of the month-end to which it refers. The Central Bank is also entitled to receive half-yearly financial accounts and the annual audited accounts of the management company. The Central Bank is further entitled to receive the annual audited accounts of shareholders of the management company or promoters of the investment company, and of the investment adviser.

Non-UCITS Public Schemes

The Central Bank non-UCITS guidelines impose similar supervision and information requirements for non-UCITS public Schemes.

7. **INVESTMENT RESTRICTIONS**

In the exercise of its role as the principal regulatory authority for Schemes, the Central Bank has also issued guidelines which impose restrictions on the form and spread of investments which can be made by Schemes established in Ireland. The investment restrictions imposed depend on whether the Scheme is a UCITS or a non-UCITS Scheme. The latter category itself can be split into different types of Schemes.

Further details of the investment restrictions mentioned below are contained in the copy Central Bank guidelines set out in Appendix A and Appendix B hereto.

UCITS SCHEMES

The restrictions on the investment policies of UCITS are set out in the UCITS Regulations and repeated in the Central Bank guidelines (See Appendix A). A UCITS may, subject to the approval of the Central Bank, derogate from the investment restrictions for six months following the date of launch provided it observes the principle of risk spreading. The principal restrictions are as follows:

- the investments of a UCITS must consist of transferable securities admitted to listing on or dealt in on a stock exchange or another regulated market in an EU member state, or transferable securities admitted to listing on or dealt in on a stock exchange or other regulated market in a non-member state which operates regularly and is open to the public, provided that in the latter case the choice of stock exchange or market has been approved by the Central Bank and/or is provided for in the Trust Deed or in the Articles of Association of the UCITS;
- A UCITS may invest no more than 10% of its net assets in unlisted securities;
- A UCITS may invest no more than 10% of its net assets in transferable securities issued by the same body provided that the total value of the transferable securities held in the issuing bodies in each of which it invests more than 5% of its assets does not exceed 40% of the value of its net assets;
- A UCITS may invest up to 35% of its net assets and in certain circumstances up to 100% of its assets in transferable securities issued or guaranteed by any EU member state, its local authorities, non-member state or public international bodies of which one or more member states are members;
- A UCITS may not acquire any units carrying voting rights which would enable it to exercise a significant influence over the management of an issuing body;
- A UCITS may hold ancillary liquid assets, employ techniques and instruments relating to transferable securities for the purposes of efficient portfolio management (within the limits laid down by the Central Bank) and employ techniques and instruments intended to provide protection against exchange risk in the context of the management of its assets and liabilities;

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- A UCITS may not acquire precious metals or certificates representing them.

NON-UCITS SCHEMES

The restrictions on the investment policies of a non-UCITS Scheme are set out in the Central Bank's non-UCITS guidelines and apply generally to non-UCITS Schemes (See Appendix B). The Central Bank has, in addition, issued separate guidelines for certain types of Schemes with specific investment and/or marketing objectives which are summarised below. The general guidelines are disapplied where there is any conflict between them and the specific guidelines. A Scheme may derogate from the investment restrictions for six months following the date of launch provided it observes the principle of risk-spreading.

- A Scheme may not invest more than 10% of its net assets in securities which are not traded in or dealt on a market which is provided for in its Trust Deed or Memorandum and Articles of Association;
- A Scheme may invest no more than 10% of its net assets in securities issued by the same institution and it may not hold more than 10% of any class of security issued by any single issuer (this latter requirement does not apply to investments in other collective investment schemes of the open-ended type);
- A Scheme may not keep more than 10% of its net assets on deposit with any one body except where assets are maintained with an EU credit institution, a bank authorised in a member state of the European Economic Area, a bank authorised by a signatory state to the Basle Capital Convergence Agreement, the Scheme's trustee/custodian or a bank associated or related to the trustee/custodian, in which case this limit is increased to 30%;
- A Scheme may not acquire any units carrying voting rights which would enable it to exercise a significant influence over the management of an issuing body;
- A Scheme may, subject to Central Bank approval, invest up to 100% of its assets in different transferable securities issued or guaranteed by any state, its constituent states, its local authorities or public international bodies of which one or more states are members;
- A Scheme may not invest more than 20% of its net assets in the units of other open-ended collective investment undertakings;
- A Scheme may employ techniques and instruments relating to transferable securities for efficient portfolio management purposes and a Scheme may employ techniques and instruments intended to provide protection against exchange risks in the context of the management of its assets and liabilities, in each case only under the conditions laid down by the Central Bank.

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- A Scheme may not carry out sales of transferable securities when such securities are not in the ownership of the Scheme;
 - A Scheme may invest in warrants on transferable securities which warrants are traded in or dealt on a market which is provided for in the Trust Deed or Memorandum and Articles of Association of the Scheme. Generally, a Scheme may not invest more than 5 per cent of its net assets in warrants on transferable securities.

The Central Bank has laid down general guidelines on the use of techniques and instruments relating to transferable securities such as futures and options, repurchase and stock lending agreements for the purposes of efficient portfolio management.

Schemes Marketing solely to Professional Investors

The conditions and restrictions set out in the Central Bank's non-UCITS guidelines, in particular those related to investment and borrowing, may be disapplied in the case of Schemes marketing their units to professional investors only. To qualify for derogation, such Schemes must have a minimum subscription requirement of at least Euro 125,000 or its foreign currency equivalent.

Qualifying Investor Schemes

The Central Bank introduced a new category of scheme in May 1996. The conditions and restrictions relating to investment objective, policies and leverage set out in the Central Bank's non-UCITS guidelines are disapplied in full in respect of Schemes which are marketed solely to qualifying investors. In addition, derogation may be sought from the other provisions of the Central Bank's non-UCITS guidelines. A minimum subscription amount of Euro 250,000 or its equivalent in other currencies applies to such Schemes. A qualifying investor is defined as any natural person with a minimum net worth (which excludes main residence and household goods) in excess of Euro 1,250,000 or an institution which owns or invests on a discretionary basis at least Euro 25,000,000 or its equivalent in other currencies or the beneficial owners of which are qualifying investors in their own right. Qualifying investors must certify to the Scheme that they meet such minimum criteria.

The following are the other types of Schemes for which specific Central Bank guidelines have been issued and the key investment restrictions imposed thereunder if the relevant Scheme is not structured as a professional or a qualifying investor Scheme.

Fund of Funds

A fund of funds is a Scheme the sole object of which is investment in units of other collective investment schemes.

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- A fund of funds may not invest more than 20% of its net assets in the units of any one scheme although this limit may be raised to 30% for one of the schemes in which it invests;
 - A fund of funds may not invest in units of another fund of funds;
 - A fund of funds may invest up to 10% of its net assets directly in transferable securities other than units of other collective investment schemes.

Feeder Fund

A feeder fund is a Scheme the sole object of which is investment in a single collective investment scheme ("the underlying scheme").

- The underlying scheme must be authorised in Ireland or authorised or established in a jurisdiction which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish law;
- The manager of the underlying scheme must waive initial charges in relation to acquisition of units by the feeder fund;
- Commission received by a manager of a feeder fund from investment in units of the underlying scheme must be paid into the feeder fund.

Venture or Development Capital Schemes

A venture capital scheme is a Scheme, the sole object of which is investment in venture or development capital.

- A venture capital scheme may not invest more than 20% of that proportion of its net assets which is intended to be invested in venture or development capital investments in any one company or group of companies. The venture capital scheme may derogate from this restriction for one year following the date of its launch provided it observes the principle of risk-spreading;
- A venture capital scheme must have a minimum subscription requirement of Euro 12,500;
- A venture capital scheme may issue partly paid units or shares.

Money Market Schemes

A money market scheme is a Scheme, the sole object of which is investment in money market instruments. The prospectus of the Scheme must contain a risk warning, drawing attention to the difference between the nature of a deposit and the nature of an

investment in a money market scheme with particular reference to the risk that the principal invested in a money market Scheme is capable of fluctuation.

- A money market Scheme may invest no more than 5% of its net assets in the debt securities of companies, other than banks, with a credit rating of less than A1/P1;
- At least 80% of the assets of a money market scheme must consist of securities or deposits having a maturity at date of acquisition of not greater than 1 year.

Property Schemes

A property scheme is a Scheme, the sole object of which is investment in property or property related assets. Property is defined as a freehold or leasehold interest in any land or building with a minimum unexpired lease of seventy years. Property related assets refers to securities issued by a body corporate whose main activity is investing in, dealing in, developing or redeveloping property.

- No more than 20% of a property scheme's net assets may be invested in any single property. This restriction is effective from the date of acquisition. The property scheme may derogate from this restriction for two years following the date of its launch provided it observes the principle of risk-spreading;
- Not more than 25% of a property scheme's net assets may be invested in properties which are subject to a mortgage;
- Not more than 25% of a property scheme's net assets may be invested in properties which are vacant, in the process of development or requiring development;
- A property scheme must have reached a minimum viable size within a specified period after launch. The minimum viable size and specified period must be defined in the prospectus.

Futures and Options Schemes - Capital Protected

A capital protected futures and options scheme is a Scheme, the primary object of which is investment in futures, options and other derivative instruments disclosed in the prospectus and which provides for the protection of capital invested in the Scheme over a given period of time not exceeding 7 years.

- The assets of this type of futures and options Scheme may only consist of futures and options, other derivatives disclosed in the prospectus and approved by the Central Bank and deposits or short-term securities which have a maturity of up to seven years;

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- Not more than 5% of the net assets of the Scheme may be invested in the debt securities of companies, other than banks, with a credit rating of less than A1/P1;
 - The futures and options in which the Scheme invests must be traded on an organised exchange. Over-the-counter derivatives are permitted only in certain circumstances.

Leveraged Futures and Options Schemes

A leveraged futures and options scheme is a Scheme the primary object of which is investment in futures and options and other derivative instruments, which does not provide for the protection of capital invested in the scheme and does not fall within the terms of the Central Bank's guidelines on the use of such instruments for efficient portfolio management purposes.

- Similar restrictions to those applicable to capital protected futures and options schemes apply but, in addition, the property of a leveraged futures and options scheme must include liquid assets which have a total minimum value, at all times, at least equal to the amount of the sum of all margin deposited and all premiums paid in respect of transactions which have not been closed out by the scheme.

Closed-Ended Schemes

A closed-ended scheme is a Scheme whose duration is finite. Such a scheme must state the closed ended period in its Memorandum and Articles of Association/Trust Deed. The prospectus of a closed-ended scheme must make appropriate reference to the fact that the scheme will not redeem its units and to the availability or otherwise of other mechanisms through which shareholders can dispose of units during the closed period. In certain circumstances, the Central Bank may permit the scheme to provide for the issue of units other than at net asset value. The scheme must demonstrate that shareholders will not be prejudiced by such a provision.

8. MARKETING OF FOREIGN COLLECTIVE INVESTMENT SCHEMES

UCITS Schemes

The UCITS Regulations in implementing the UCITS Directive permit the marketing of UCITS in Ireland where the UCITS has been authorised in another Member State of the EU. Formal notification however must be given to the Central Bank together with information and documentation on the UCITS at least 2 months before the UCITS commences to market its units in Ireland. In addition such UCITS under the UCITS Regulations must ensure that facilities are available in Ireland for making payments, repurchasing or redeeming units and for making available information in relation to the UCITS. Irish residents may purchase units in foreign UCITS Schemes without restriction.

Non-UCITS Public Schemes

Non-UCITS foreign public Schemes which, if incorporated in the State would constitute "designated companies" for the purposes of Part XIII of the Companies Act, 1990, may not advertise or market their units in any way in Ireland without the prior approval of the Central Bank. Similarly, the Unit Trusts Act, 1990 provides that the management company or trustee of an "unauthorised unit trust scheme" may not sell, purchase or market units of the scheme in Ireland without the approval of the Central Bank.

The Central Bank has issued guidelines for obtaining such approvals. Written application must be made to the Central Bank providing information about the Schemes including the location where unitholders can obtain payment of dividends and repurchase proceeds and can inspect and obtain copies of documentation relating to the Scheme. The essential documentation relating to the Scheme must also be furnished. The Central Bank must be satisfied that the Scheme is authorised by a supervisory authority set up to ensure the protection of unitholders which provides a similar level of investor protection to that under Irish laws governing Schemes or that the constitution, investment objectives, management and custodial arrangements of the Scheme provide for such a similar level of protection.

Subject to certain exceptions, non-UCITS foreign public Schemes which are constituted as companies may not issue or distribute any prospectus or document offering for subscription or purchase shares or debentures unless the prospectus document complies with the Third Schedule to the Irish Companies Act, 1963 and such prospectus is filed with the Registrar of Companies in Dublin.

Non-UCITS foreign public Schemes marketing their units or shares in Ireland or marketing their units in jurisdictions with no statutory regulation of marketing must comply with the relevant Central Bank advertising guidelines which are set out in Appendix C.

9. TAXATION OF COLLECTIVE INVESTMENT SCHEMES

The Taxes Consolidation Act, 1997 (as amended) (“TCA”) sets out the Irish taxation treatment of UCITS and Non-UCITS Schemes.

The TCA provides that UCITS and non-UCITS schemes and their investors will not be liable to tax on income or gains, unless subject to the exemptions outlined below, the Scheme has Irish resident or ordinarily resident unitholders.

Additionally, transfers of units in a Scheme will generally not be liable to Irish stamp duty and gifts/inheritalces of units will not be liable to gift or inheritance tax provided certain conditions are met.

A scheme will not be liable to tax even if the unitholder is Irish resident or ordinarily resident where the unitholder is (a) a pension scheme; (b) a company carrying on life insurance business; (c) an investment undertaking; (d) a special investment scheme; (e) a charity; (f) a qualifying management company or specified company within the meaning of Section 734(1) TCA (essentially IFSC 10% companies managing the Scheme and such companies not owned more than 25% by Irish residents) and certification of such status has been provided to the Scheme.

In certain circumstance it is possible to establish an agency management company in the IFSC which will be liable to corporation tax on its fee income in respect of the management of schemes on behalf of non-Irish resident investors at the rate of 10% until 31st December, 2002. After that date tax would be chargeable at 12.5%

A management company has always been entitled to the benefit of the Irish double tax treaties (even if it is a fund management or administration company, licensed to carry out business in the IFSC and pays tax at only 10% on its trading income arising in respect of unitholders not resident in Ireland). This is of benefit in repatriating profits from the management company to a foreign parent if the relevant treaty has the effect of preserving the benefit of the low rate of Irish tax in the hands of the parent, and may also be of benefit in ensuring that the management company is not subject to tax in a foreign jurisdiction (which has a relevant double tax treaty) unless it carries on business in that jurisdiction through a permanent establishment.

10. **A & L GOODBODY**

A & L Goodbody, one of Ireland's largest law firms with over 160 lawyers, has extensive experience in the area of collective investment schemes. Our dedicated funds team has been closely involved in the development of the IFSC as an international fund domicile. Our expertise in the funds area complements the firm's all round expertise in the financial services industry. A & L Goodbody has a well-established client base which includes international and Dublin based banks, fund administration groups, global custodians, fund managers and other financial services groups. A & L Goodbody also advise fund promoters and service providers on all aspects of the setting up and operations of funds in Ireland. A & L Goodbody has consistently topped independent surveys of the Dublin fund industry both in terms of the number of funds represented and the aggregate values of the funds represented.

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APPENDIX A

CENTRAL BANK GUIDELINES INVESTMENT RESTRICTIONS ON UCITS FUNDS

1. Investments of a UCITS are confined to:
 - (i) transferable securities¹ which are either admitted to official listing on a stock exchange in a Member State or non-Member State or which are dealt on a market which is regulated, operating regularly, recognised and open to the public in a Member State or non-Member State;
 - (ii) recently issued transferable securities which will be admitted to official listing on a stock exchange or other market (as described above) within a year.

The trust deed or articles of association must list all of the stock exchanges and markets on which the UCITS may invest. Restrictions in respect of individual stock exchanges and markets may be imposed by the Bank on a case by case basis.

2. A UCITS may invest no more than 10 per cent. of its assets in transferable securities² other than those referred to in paragraph 1 above.
3. An investment company may acquire real and personal property which is required for the purpose of its business.

¹ includes debt securities.

² Regulation 46 2(a) provides that the Bank may deem certain debt instruments to be equivalent to transferable securities for the purpose of this limit (see Regulation 47). To date Regulation 46 2(a) has not been utilised by the Bank.

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4. A UCITS may not acquire either precious metals or certificates representing them. This provision does not prohibit a UCITS from investing in securities, in accordance with Regulation 45, issued by a corporation whose main business is concerned with precious metals.
 5. A UCITS may invest no more than 10 per cent. of its assets in transferable securities issued by the same body provided that the total value of securities held in bodies in which it invests more than 5 per cent., is less than 40 per cent.
 6. The limit referred to in paragraph 5 above is raised from 10 per cent. to 35 per cent. and the transferable securities are not taken into account in applying the 40 per cent. limit, if the securities are issued or guaranteed by a Member State or its local authorities or by a non-Member State or public international body of which one or more Member States are members.
 7. The limit referred to in paragraph 5 above is raised from 10 per cent. to 25 per cent. and the transferable securities are not taken into account in applying the 40 per cent. limit, if the securities take the form of bonds issued by a credit institution with its registered office in a Member State which is subject to special public supervision designed to protect bond holders. If the UCITS invests more than 5 per cent. of its assets in these particular bonds issued by one issuer, then the total value of these investments must be less than 80 per cent. of the value of the UCITS assets.
 8. The limits referred to in paragraphs 5, 6 and 7 above may not be combined, so that the maximum a UCITS can invest in any one body is defined under paragraph 7 above. (i.e. 35 per cent.).

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9. The Bank may authorise a UCITS to invest up to 100 per cent. of its assets in different transferable securities issued or guaranteed by any Member State, its local authorities, non-Member State or public international body of which one or more Member States are members, provided it is satisfied that unit holders have protection equivalent to that of unit holders in UCITS complying with the limits in paragraphs 5 and 8 above. The following conditions shall apply to such a UCITS:
- (i) the UCITS must hold securities from at least 6 different issues with securities from any one issue not exceeding 30 per cent. of the assets of the UCITS;
 - (ii) the UCITS must specify in its trust deed or articles of association the names of the States, local authorities or public international bodies issuing or guaranteeing securities in which it intends to invest more than 35 per cent. of its assets;
 - (iii) the UCITS must specify in its prospectus and promotional literature that the Bank has granted authorisation for this type of investment and must indicate the States, local authorities and/or public international bodies in which it intends to invest or has invested more than 35 per cent. of its assets.
10. A UCITS may not invest in collective investment schemes of the open-ended type unless they are schemes within the meaning of Regulation 3(2). A UCITS may invest no more than 5 per cent. of its assets in such collective investment schemes.
11. A UCITS should notify the Bank and must receive authorisation from the Bank if it intends to invest in a unit trust or investment company managed by the same management company or a company linked to the management company or investment company by common management or control or a direct or indirect holding. A UCITS may only make such an investment if the underlying scheme specialises in a certain type of investment. The Bank will authorise such an investment only if the UCITS has announced its intention of making use of that option and if this intention is stated in the trust deed or articles of association.

12. If the option referred to in paragraph 11 above is availed of, the management company or investment company may not charge any fees or costs to the UCITS on account of such transactions.

13. An investment company or management company acting in connection with all of the UCITS which it manages may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

14. A UCITS may acquire no more than:

- (i) 10 per cent. of the non-voting shares of any single issuing body;
- (ii) 10 per cent. of the debt securities of any single issuing body;
- (iii) 10 per cent. of the units of any single collective investment scheme of the open-ended type.

NOTE: The limits laid down in (ii) and (iii) above may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or the net amount of the securities in issue cannot be calculated.

15. Paragraphs 13 and 14 above shall not be applicable to:

- (i) transferable securities issued or guaranteed by a Member State or its local authorities;
- (ii) transferable securities issued or guaranteed by a non-Member State;
- (iii) transferable securities issued by public international bodies of which one or more Member States are members;
- (iv) shares held by a UCITS in the capital of a company incorporated in a non-Member State which invests its assets mainly in the securities of issuing bodies with their registered offices in that State where under the legislation of that State such a holding represents

the only way in which the UCITS can invest in the securities of issuing bodies in that State. This waiver is applicable only if in its investment policies the company from the non-Member State complies with the limits set out in paragraphs 5 to 14 (excepting paragraph 9) above, and provided that where these limits are exceeded paragraphs 16 and 17 below are observed;

- (v) shares held by an investment company in the capital of subsidiary companies carrying on the business of management advice or marketing exclusively on its behalf.
16. UCITS need not comply with the limits laid down in paragraphs 5 through 15 above when exercising subscription rights attaching to transferable securities which form part of their assets.
17. The Bank may allow recently authorised UCITS to derogate from the provisions of paragraphs 5 to 9 above for six months following the date of their authorisation, provided they observe the principle of risk spreading.
18. If the limits laid down in paragraphs 5 through 15 above are exceeded for reasons beyond the control of a UCITS, or as a result of the exercise of subscription rights, the UCITS must adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit holders.
19. A UCITS may hold ancillary liquid assets. Where such ancillary liquid assets consist of deposits with or securities evidencing deposits issued by or securities guaranteed by any one institution they are subject to a limit of no more than 10 per cent of the net assets of a UCITS. This limit is increased to 30 per cent for the following:
- (i) an EU credit institution;
 - (ii) a bank authorised in the remaining Member States of the European Economic Area (EEA) (Norway, Iceland, Liechtenstein);

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- (iii) a bank authorised by a signatory state, other than an EU Member State, or a Member State of EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States);
 - (iv) the trustee;
 - (v) a bank which is an associated company of the trustee may be permitted on a case by case basis.

Related companies, institutions are regarded as a single institution for the purposes of this paragraph.

- 20. A UCITS may employ techniques and instruments relating to transferable securities for the purposes of efficient portfolio management in accordance with the conditions and limits set down by the Bank under notice UCITS 11.
- 21. A UCITS may employ techniques and instruments relating to transferable securities for protection against exchange risks in accordance with the conditions and limits set down by the Bank under notice UCITS 11.
- 22. Neither an investment company, nor a management company or trustee acting on behalf of a unit trust, may carry out sales of transferable securities when such securities are not in the ownership of the investment company or the unit trust respectively.
- 23. A UCITS may invest in warrants on transferable securities which warrants are traded in or dealt on a market which is provided for in the trust deed or articles of association.

A UCITS, an objective of which is to invest in such warrants must include the following risk warning in a prominent place in the prospectus:

"an investment in the scheme should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors".

Other UCITS may invest no more than 5 per cent. of their net assets in such warrants.

**Securities and Exchanges Supervision Department
Central Bank of Ireland
August 1996**

APPENDIX B

CENTRAL BANK GUIDELINES INVESTMENT RESTRICTIONS ON NON-UCITS FUNDS

The investment restrictions set out in this notice apply to all collective investment schemes except where they are disapplied by notices relating to schemes with specific investment and/or marketing objectives. Schemes may derogate from the investment restrictions contained in this notice for six months following the date of their launch provided they observe the principle of risk spreading.

A scheme must have reached a minimum viable size within a specified period after the launch. The minimum viable size and specified period must be defined in the prospectus. In the event that the minimum viable size is not reached within the specified period, a scheme must return any subscriptions to the unitholders and apply to the Bank for revocation of its authorisation.

The investment objectives and policies of a scheme must be clearly defined in the prospectus with sufficient information to enable unitholders to be fully aware of the risks they are entering into.

1. A scheme may not invest more than 10 per cent. of its net assets in securities which are not traded in or dealt on a market which is provided for in the trust deed, articles of

association or partnership agreement. Restrictions in respect of markets may be imposed by the Bank on a case by case basis.`

2. A scheme may invest no more than 10 per cent. of its net assets in securities issued by the same institution. Where a scheme has as a sole objective, investment in Irish equities, it may derogate from this limit as follows:

- An investment of up to 15 per cent. of net assets may be made in an equity which has a weighting in excess of 10 per cent. in the ISEQ index;
- An investment of up to 12.5 per cent. of net assets may be made in an equity which has a weighting of between 8 per cent. and 10 per cent. in the ISEQ index.

No more than 10 per cent. of the net assets of a scheme may be kept on deposit with any one institution; this limit is increased to 30 per cent. for deposits with or securities evidencing deposits issued by or securities guaranteed by the following:

- (i) An EU credit institution
- (ii) A bank authorised in a Member State of the European Economic Area (EEA) (Norway, Iceland, Liechtenstein,)
- (iii) A bank authorised by a signatory state, other than an EU Member State, or a Member State of EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States)
- (iv) The trustee
- (v) A bank which is an associated or related company of the trustee, on a case by case basis.

3. Related companies/institutions are regarded as a single issuer for the purpose of paragraph 2. above.

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4. A scheme may not hold more than 10 per cent. of any class of security issued by any single issuer. This requirement does not apply to investments in other collective investment schemes of the open-ended type.

 5. An investment company, or a management company acting in connection with all of the schemes which it manages, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

 6. A scheme may, subject to authorisation by the Bank, invest up to 100 per cent. of its assets in transferable securities issued or guaranteed by any State, its constituent states, its local authorities, or public international bodies of which one or more States are members. Full disclosure must be made in the prospectus indicating the States, local authorities and public international bodies in the securities of which it is intended to invest more than 10 per cent. of the assets in accordance with the provision of the preceding sentence.

 7. A scheme may acquire the units of other open-ended collective investment schemes subject to the following:
 - (a) a scheme may not invest more than 20 per cent. of net assets in such schemes
 - (b) where a scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of units

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- (c) where a commission is received by the manager of the scheme by virtue of an investment in the units of another collective investment scheme, this commission must be paid into the property of the scheme.
8. The Bank may allow derogations from the limits laid down in this notice to a scheme investing in other collective investment schemes or companies which are authorised or incorporated in a non-EU state and where such collective investment schemes or companies invest their assets in the securities of issuing bodies which have their registered offices in that state and where under the legislation of that state such a holding represents the most effective way in which the scheme can invest in the securities of that state.
9. The Bank may authorise a scheme to wholly own the shares of a limited company which would, in turn, invest in investments which are permitted under these notices for reasons which the Bank is satisfied are justified as being in the interests of unitholders.
10. The limits on investments contained in this and other notices are deemed to apply at the time of purchase of the investments. If the limits laid down in this notice are subsequently exceeded for reasons beyond the control of a scheme or as a result of the exercise of subscription rights, the scheme must adopt as a priority objective the remedying of that situation, taking due account of the interests of its unitholders.
11. A scheme may employ techniques and instruments for the purposes of efficient portfolio management and to provide protection against exchange rate risks under the conditions and within the limits laid down by the Bank (Ref. NU 16).

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12. A scheme is permitted to engage, to a limited extent, in leverage through the use of techniques and instruments permitted for the purposes of efficient portfolio management under the conditions contained in NU 16. The net maximum potential exposure created` by such techniques and instruments or created through borrowing, under the conditions and within the limits contained in NU 3, or through both of these together, shall not exceed 25 per cent. of the net asset value of a scheme.

The prospectus must disclose a scheme's intention to engage in leverage.

13. A scheme may hold ancillary liquid assets.
14. A scheme may not carry out sales of transferable securities when such securities are not in the ownership of the scheme.
15. A scheme may invest in warrants or transferable securities which warrants are traded in or dealt on a market which is provided for in the trust deed, articles of association or partnership agreement.

A scheme, an objective of which is to invest in such warrants must include the following risk warning in a prominent place in the prospectus:

"an investment in the scheme should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors".

Other schemes may invest no more than 5 per cent. of their net assets in such warrants.

**Securities and Exchanges Supervision Department
Central Bank of Ireland
January 1996**

APPENDIX C

CENTRAL BANK ADVERTISING GUIDELINES

1. Collective investment schemes which propose to market their units in Ireland must be authorised by a supervisory authority set up in order to ensure the protection of unitholders and which, in the opinion of the Bank, provides a similar level of investor protection to that provided under Irish laws, regulations and conditions governing collective investment schemes. Alternatively, the Bank must be satisfied that the management and trustee/custodial arrangements, constitution and investment objectives of any scheme which it is proposed to market in Ireland provide a similar level of investor protection to that provided by schemes authorised under the Irish laws, regulations and conditions governing collective investment schemes.

2. A scheme situated in another jurisdiction which proposes to market its units in Ireland must make application to the Bank in writing, enclosing the following information and documentation:

Information

- The full name of the scheme.
- The full name and address of the operator.
- The full name and address of any supervisory authority or authorities to which the operator is subject in the state in which the operator is established.
- The full name and address of the trustee or custodian.
- The jurisdiction in which the scheme is authorised.
- Details of the arrangements for the marketing of units in Ireland.

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- The full name and address of the establishment in Ireland (hereafter "facilities agent") where facilities will be maintained where:
 - unitholders can obtain payment of dividends and redemption or repurchase proceeds;
 - the instrument(s) constituting the scheme, the prospectus, the annual and half-yearly reports can be examined, free of charge, and copies obtained if required; and
 - complaints can be made for forwarding to the head office of the operator.

Documentation

- A statement or certificate from the supervisory authority of the scheme confirming that it is authorised.
- A certified copy of the fund rules or instruments of incorporation.
- The prospectus and any amendments thereto.
- The latest annual report and any subsequent half-yearly report.
- A copy of any other document affecting the rights of unitholders in the scheme.
- Confirmation from the facilities agent that it has agreed to act for the scheme.

Documentation submitted to the Bank must be in English or Irish or must be accompanied with a translation in English or Irish.

3. Collective Investment Schemes Established in Certain Jurisdictions

Collective investment schemes which are one of the following:

- established in Guernsey and authorised as Class A schemes
- established in Jersey and authorised as recognised funds
- established in the Isle of Man as authorised schemes

will receive approval to market their units in Ireland on completion of the information and documentation requirements.

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4. Marketing of units in Ireland may not take place until the scheme has received a letter of approval from the Bank.
5. The following statement must be included in a prominent position in each copy of the scheme's prospectus and in any marketing material distributed in Ireland for the purposes of promoting the scheme:

"While this scheme has been approved to market its units to the public in Ireland by the Central Bank of Ireland, the scheme is not supervised or authorised in Ireland. It is incorporated/established in _____ and is supervised by _____."

6. The prospectus must provide the following information for Irish investors:
- details of the facilities agent and the facilities maintained;
 - provisions of Irish tax laws, if applicable;
 - details of the places where issue and repurchase prices can be obtained or are published;
 - the minimum subscription requirement in the case of schemes which market solely to professional investors.
7. A scheme constituted as an umbrella scheme must seek approval before marketing units of additional sub-funds in Ireland. Applications must be made to the Bank, in writing, enclosing the following:
- a statement or certificate from the supervisory authority of the scheme confirming that the sub-fund is authorised;
 - the revised prospectus for the scheme; and
 - details of any changes in the operation of the scheme since the initial approval.
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8. Schemes marketing their units in Ireland must comply with the provisions of the Code of Advertising Standards for Ireland. The code is available from the Advertising Standards Authority for Ireland, 35/39, Shelbourne Road, Dublin 4. The standards are also outlined in NU 9' under "Advertising".

 9. Schemes marketing their units in Ireland must comply with the law, regulations and administrative provisions in force in Ireland.

 10. The annual and half-yearly reports issued by schemes marketing their units in Ireland must be submitted to the Bank as soon as they are available.

 11. When a scheme has received approval from the Bank to market units in Ireland the name of the scheme and the name and address of the facilities agent will be placed on a list of schemes marketing in Ireland, which will be made available to the public on request.

**Securities and Exchanges Supervision Department
Central Bank of Ireland
January 1996**