

## QIF- The Regulated Hedge Fund Solution

### Irish Qualifying Investor Funds

A Qualifying Investor Fund ("QIF") is an attractive option for hedge funds and funds of hedge funds that may not fit into a UCITS structure. The requirements for liquidity, diversification, restrictions on borrowing and leverage, applicable to a UCITS fund do not apply to a QIF. A QIF is attractive because it allows the investment manager virtually unlimited flexibility within the management strategy. Simultaneously, the Irish regulatory framework and the trustee/custodian oversight functions provide a robust infrastructure for investors.

The QIF is an ideal product for structuring many different types of funds including the following:

- Property Funds
- Hedge Funds
- Venture Capital Funds
- Private Equity Funds
- Funds of Funds

The Central Bank of Ireland does not impose risk diversification requirements (funds of funds excepted). However, where a QIF is structured as an investment company, it must confirm the aim of spreading risk as required by Irish company law.

QIFs can be authorized by the Central Bank of Ireland within 24 hours of the submission of relevant documentation to the Central Bank of Ireland provided the following are in place and pre-approved:

- Promoter
- Investment manager
- Directors
- Trustee/custodian
- Administrator

### What are the typical fund structures?

The following legal structures are suitable for QIFs:

- Investment Company
- Unit Trust\*
- Common Contractual Fund ("CCF")\*

*\*All unit trusts and common contractual funds must appoint an Irish domiciled management company*

### What distribution channels are utilised by QIFs?

QIFs are established in Ireland under the non-UCITS regulatory regime. QIFs cannot passport for sale into other countries, however this is subject to change in 2013 with the introduction of the AIFM Directive. QIFs are normally sold on a private placement basis to institutions or high net worth investors.

### What are the permitted investments of a QIF?

A QIF may invest in a full spectrum of assets from listed securities to exotic derivatives, hedge funds, unregulated funds\*, ETFs, private equity, real estate, precious metals and even unusual assets such as ships and toll roads.

*\*A QIF established as a fund of funds may invest up to 100% in unregulated underlying funds subject to a maximum of 50% in any one unregulated scheme*

### What are the restrictions on borrowing or leverage?

A QIF is not subject to borrowing or leverage limits but the prospectus must specify the extent to which borrowing or leverage may be used.

### What are the restrictions on the use of a prime broker by a QIF?

In the case of a QIF there is no limit on the extent to which assets may be passed to a prime broker. The following is a summary of the Central Bank of Ireland's current position on the use of prime brokers by Irish domiciled QIFs:

- The arrangement must incorporate a procedure to mark positions to market daily in order to monitor the value of assets passed to the prime broker
- The prime broker must agree to return the same or equivalent assets to the fund
- The arrangement must incorporate a legally enforceable right of set-off for the fund.

The prime broker must be regulated to provide prime broker services by a recognised regulatory authority, must have a minimum credit rating of A1/P1 and must have shareholders' funds in excess of €200 million (or its equivalent in another currency). There must be clear disclosure in the QIF's documentation of its proposed relationship with the prime broker.

Where the prime broker holds assets of the QIF other than provided for above, it must be appointed as a sub-custodian by the fund's custodian/trustee.

Similar rules apply in the case of an OTC counterparty\* where the QIF's counterparty risk exposure is in excess of 40% of net assets.

*\*All OTC counterparties must have a minimum credit rating of A2/P2*

### What are the tax implications of a QIF?

Irish QIFs are exempt from Irish tax on their income and gains, regardless of where their investors are resident. No withholding taxes apply, under domestic legislation, on payments made by a QIF to non-Irish resident investors provided the necessary declarations are in place. Depending on the tax status of a QIF investor in its home jurisdiction, a QIF can also be structured as

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a tax transparent vehicle, i.e. a CCF, resulting in the retention of the tax benefits (e.g. reduced withholding taxes) which investors would have been entitled to through direct ownership.

In certain circumstances, the use of S110 companies (Special Purpose Vehicles) may improve Double Taxation Treaty access and overall tax efficiency if adopted by a QIF.

### Who is eligible to invest in a QIF?

The minimum initial subscription is €100,000 with no limits on subsequent subscriptions for a “qualifying investor”. A “qualifying investor” must:

- (a) certify that they are an informed investor and provide certain written confirmations (i) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or (ii) that the investor’s business involves, whether for its own account or for the account of others, the management, acquisition or disposal of property of the same kind as the property of the fund; or
- (b) be a “professional client” within the meaning of Annex II of the MiFID Directive (2004/39/EC); or
- (c) be an investor who receives an appraisal from an EU Credit Institution, a MIFID firm or a UCITS management company that they have the appropriate expertise, experience and knowledge to adequately understand the investment in the fund.

Exemptions from the above criteria are available to certain investors such as the employees of the promoter or investment manager.

### Are there any redemption restrictions?

While open-ended QIFs may limit dealing to annually, the Central Bank of Ireland requires that the time between submission of a redemption request and payment of settlement proceeds usually must not exceed 90 calendar days. A wide range of liquidity options exist. Limited liquidity funds may be utilised so as to restrict redemptions to just one dealing day during the life of the fund. Additionally, a QIF may be established as a closed-ended fund.\*

Side pockets, gates, deferred redemptions and in-kind redemptions can all be facilitated.

*\* A closed-ended fund that lists on a stock exchange will need to comply with the EU Prospectus Directive*

### What are the requirements for service providers and directors?

- Promoter (regulated and €635,000 capital)
- Two Irish resident directors
- Money Laundering Reporting Officer
- Investment manager
- Irish registered administrator
- Irish registered trustee/custodian
- Auditor
- Company Secretary

### Solutions Offered by KB Associates

KB Associates (“KBA”) is an independent consulting firm dedicated exclusively to meeting the needs of managers promoting offshore investment funds.

KBA is independent of the various service providers to such investment funds (administrators, custodians, auditors, legal advisors etc.).

#### Services include

##### Project management of set-up

KBA can provide a complete turnkey set-up service or provide assistance on a modular basis.

##### Administrator and Custodian selection

KBA has significant experience in service provider selection. KBA maintains a database detailing the product offering of each service provider based in Ireland, which is updated annually. KBA also oversees on an ongoing basis, a number of service providers on behalf of our clients which allows us to monitor the actual quality of service against the stated capabilities.

##### Professional advisor selection

KBA can advise on the selection of auditor, legal advisor and listing agent.

##### Development of operational model and service level agreement

KBA can establish operating procedures between the various service providers to a fund, principally between the investment manager, administrator and custodian. KBA can also establish service level standards with the service providers and set in place reporting procedures to monitor actual performance against agreed standards.

##### Review of fund documents

KBA can review all legal documents (prospectus, supplements, custody agreement, administration agreement and investment management agreement) from an operational perspective.

##### Directors

KBA can provide directors with many years experience at a senior level in the funds industry. Please visit our website at [www.kbassociates.ie](http://www.kbassociates.ie) for profiles of our staff.

##### Money Laundering Reporting Officer (“MLRO”)

The MLRO is responsible for overseeing the adequacy of the work undertaken by the administrator in relation to compliance with anti money laundering legislation. At KBA, this function is performed by a consultant who is a member of the Association of Compliance Officers in Ireland.

*This document is for information purposes only and is intended as a general guide. Professional and legal advice should always be obtained to address specific legal and other issues arising.*