

Ireland

Regulation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Regulation

Authorization requirements and process

In Ireland, a hedge fund manager/advisor is typically regulated under Statutory Instrument No. 60 of 2007 entitled European Communities (Markets in Financial Instruments) Regulations 2007 (as amended) by the Irish Financial Regulator.

The authorization process consists of the completion of an application form, individual questionnaires for directors, and a submission of a business plan. During the authorization process, the Irish Financial Regulator examines the beneficial ownership of the firm and its group structure (if applicable), reviews the internal procedures and controls that the applicant intends to put in place to manage its business and establishes that the applicant has sufficient expertise to carry out its proposed business. The applicant therefore is subject to a detailed process and further information required by the Irish Regulator is obtained by correspondence. Once the Irish regulator is satisfied with the above requirements and appropriate capital is injected into the applicant, an authorization is granted.

Typical timescale to receive approval

It normally takes about four to six months to obtain regulatory approval.

Regulatory capital requirements

A hedge fund manager/advisor is subject to the Capital Requirements Directive (CRD). Under the CRD, the fund manager/advisor must have initial capital of EUR 125,000 if it carries out discretionary portfolio management and EUR 730,000 if it trades on own account. For many investment managers/advisors, the real capital cost is the requirement to maintain capital equal to a quarter of fixed expenses. Normally, the most significant fixed expense for a fund

manager/advisor is employee salaries; however salaries paid as bonuses are not included in the fixed expenditure requirement.

Significant restrictions on marketing to investors

Onshore hedge funds

An Irish hedge fund established as a Qualifying Investor Fund (QIF) may be sold only to private investors whose net worth is not less than EUR 1.25 million (excluding main residence and household goods) and to any institution which owns or invests on a discretionary basis at least EUR 25 million or whose beneficial owners are qualifying investors in their own right. In addition, the initial subscription must be for at least EUR 250,000. There are very few investment or leverage restrictions on QIFs and this is the most common form of Irish domiciled hedge fund.

A hedge fund established as a Professional Investor Fund (PIF) may be sold to investors' subject only to a minimum subscription of EUR 125,000. However, there are limitations on leverage (200 percent) and other investment restrictions and as a result PIFs are not a preferred vehicle for the establishment of a hedge fund.

Offshore hedge funds

Non Irish domiciled hedge funds may not be marketed to the public. It is possible for such funds to be sold under private placement arrangements.

Hedge fund structures

Regulation

Authorization requirements

Irish domiciled hedge funds must comply with the following authorization requirements:

- The hedge fund promoter and investment manager (which can be based outside of Ireland) must first be approved by the Irish Financial Regulator.

This involves submission of material setting out the applicant's level and depth of experience and their financial and regulatory status. The application process can take about eight weeks and will be speedy if the applicants are already in a developed market jurisdiction.

- The hedge fund itself must also be authorized.

This process can occur in parallel with the approval of the promoter and manager/investment advisor. If these entities are already approved, a hedge fund established as a QIF can be approved within 24 hours.

Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and /or strategies

The vast majority of Irish domiciled hedge funds are established as QIFs (see above). There are no investment concentration or leverage restrictions and all investment strategies are permitted.

Rules regarding the publishing of the accounts and prospectuses

Irish domiciled hedge funds must publish audited financial statements each year. There are no rules specific to hedge funds regarding the publication of prospectuses.

Time-scale of establishment of a hedge fund

A hedge fund established as a QIF can be approved within 24 hours provided that the manager/investment advisor, the promoter and the directors of the fund are already approved by the Irish Financial Regulator.

Investors

Regulation

Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

As described previously, an Irish hedge fund established as a QIF may be sold only to private investors whose net worth is not less than EUR 1.25 million (excluding main residence and household goods) and to any institution which owns or invests on a discretionary basis at least EUR 25 million or whose beneficial owners are qualifying investors in their own right.

In addition, the initial subscription must be for at least EUR 250,000. A hedge fund established as a PIF may be sold to investors' subject only to a minimum subscription of EUR 125,000.

There are no restrictions on the minimum/maximum numbers of investors.

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