



FINANCIAL REGULATOR
Rialtóir Airgeadais

Guidance Note 1/07

Authorisation of Qualifying Investor Schemes –
Application Process

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Assistance Paper

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Authorisation of Qualifying Investor Schemes – Application Process

1. Introduction

Notice NU 24 of the NU Series of Notices provides for the authorisation of collective investment schemes which market solely to qualifying investors (QIFs). The Financial Regulator will authorise a QIF on receipt of a complete application for authorisation provided that:

- the parties involved are approved in advance of the application and meet the necessary authorisation criteria; and
- appropriate confirmation is received in relation to the contents of the relevant documentation.

This Guidance Note provides information in relation to the authorisation procedure and guidance in relation to various matters relevant to the operations of QIFs. The authorisation application forms are available from the Financial Regulator's website: www.financialregulator.ie

2. Application Criteria

An application for authorisation as a QIF can only be made where the

- Promoter
- Management company
- Directors in the case of an investment company
- Trustee/custodian
- Other service providers (fund administrator, investment manager)

have been approved/cleared by the Financial Regulator in advance of the application.

An application for authorisation must be made in writing specifying the legislation under which authorisation is required. In the case of a unit trust or common contractual fund, the application must be made jointly by the proposed management

company and trustee/custodian. The letter of application must be accompanied by the standard application form, duly completed and all relevant documentation.

Complete applications should be submitted to:

The Manager
Financial Institutions and Funds Authorisation
Financial Regulator
PO Box 9138
College Green
Dublin 2

Applications should be clearly identified as **QIF applications**, for the attention of **CIS Authorisation**.

The application form requires certification from the investment company, management company or general partner, as appropriate, in relation to the contents of the form and the QIF documentation. The trustee or custodian of the QIF is required to provide confirmation in relation to provisions of the trust deed or custodian contract.

Applications must be filed **no later than 3pm** on the day before the proposed date of authorisation. Where applications are not in full compliance with the Financial Regulator's requirements authorisation will not proceed. Late and/or incomplete applications will be returned in order that documents may be re-dated or otherwise amended as necessary.

Letters of authorisation will issue by close of business on the day of authorisation.

3. Pre-Clearance

All parties to the QIF must have been authorised or otherwise deemed acceptable to the Financial Regulator prior to the application for authorisation.

The Financial Regulator expects that the board of directors of management companies and investment companies will include directors who have experience in relation to the organisation of collective investment schemes. All directors, including new directors to existing management companies, must be approved in advance of the application.

Where a proposed director has previously been approved by the Financial Regulator to another investment company/management company, the relevant sections of the Individual Questionnaire can be submitted with the application for authorisation. In the case of directors who have been previously approved to other regulated entities, the relevant sections of the Individual Questionnaire must be submitted 5 working days in advance of the authorisation application.

In the event of a name change of any of the previously approved/cleared parties to the QIF, notification of the change, together with evidence of change of name, must be provided to the Financial Regulator prior to the application for authorisation. Changes of address can be notified by way of the application form.

4. Derogations

In the event that a QIF intends to seek derogations from provisions of the NU Series of Notices, or from general policies applicable to QIFs, requests for derogations must be made in good time to allow these be addressed by the Financial Regulator in advance of applications for authorisation. Details of derogations provided must be included in the application form and set out in the prospectus.

The Financial Regulator expects that applicants will discuss proposals which have novel or other unusual features in advance of the submission of formal applications.

5. Offer Period

The offer period cannot commence prior to the authorisation of the QIF and should be for a period no longer than six months. In the case of QIFs which are established as private equity or property schemes this period may extend up to one year provided that the terms of the offer ensure that early investors are not prejudiced by the arrangements.

Extensions to initial offer periods may be made without prior notification to the Financial Regulator provided that no subscriptions have been received at the date of the proposed extension. Notifications of any such extensions should be made to the Financial Regulator on a quarterly basis.

Proposals to extend initial offer periods where subscriptions have been received must be submitted to the Financial Regulator for approval.

These provisions are also applicable to the approval of additional sub-funds of umbrella QIFs.

6. Applicable Guidance Notes

The requirements of the following Guidance Notes are, where appropriate, applicable to the operations of QIFs:

- Guidance Note 2/96 - Promoters of collective investment schemes
- Guidance Note 1/97 - Multi-advisor collective investment schemes: disclosure in respect of investment advisors
- Guidance Note 2/97 - Duration of closed-ended collective investment schemes
- Guidance Note 3/97 - Guaranteed collective investment schemes
- Guidance Note 1/99 - Administration companies and the Investor Compensation Act, 1998
- Guidance Note 2/99 - Money market funds: European Central Bank reporting requirements
- Guidance Note 3/99 - Share classes – hedging against exchange rate movements
- Guidance Note 1/00 - Valuation of the assets of collective investment schemes
- Guidance Note 1/01 - Collective investment schemes other than UCITS - feeder schemes and fund of fund schemes: acceptable investments and related issues
- Guidance Note 1/03 - Amalgamations of Irish authorised collective investment schemes with other collective investment schemes
- Draft Guidance Note -/04 – Appointment of prime brokers and related issues

The following policy papers are also relevant:

- Directed brokerage programmes and similar arrangements – 21 November 2002
- Trust deeds / custodian agreements – November 2004

- Investment managers and investment advisers to authorised collective investment schemes – approval and disclosure – November 2004

7. Requirement to Spread Investment Risk

A QIF authorised under the Companies Act, 1990 Part XIII is subject to Section 253(2)(a) in relation to the spreading of investment risk. The Financial Regulator does not, in that context, impose risk diversification requirements. It is the responsibility of the directors of the investment company to ensure that the QIF complies with the legislative requirement.

8. Investment Policy

Paragraph 6 of Notice NU 24 requires that a prospectus must describe the investment objectives and investment and borrowing policies of the QIF. These descriptions must be comprehensive and accurate, readily comprehensible to investors and be sufficient to enable investors make an informed judgement on the investment proposed to them.

The description should include comprehensive information in relation to proposed investments, an indication of where these are traded and the purpose behind the investment.

Paragraph 6 also requires that the prospectus contain quantitative parameters on the extent of leverage which will be engaged in by the QIF. A QIF which will not be subject to leverage limits should indicate the typical levels of leverage, or range of leverage, that may be employed.

9. Investment in other Collective Investment Schemes

A QIF which does not have, as its principal objective, investment in a single collective investment scheme, is not required to comply with paragraphs 2 and 3 of Notice NU 22 (Feeder Schemes), notwithstanding that the QIF may have the ability to invest more than 50% of net assets in another collective investment scheme. Paragraphs 4 and 5 of NU 22 remain applicable.

10. Issue of Debt Securities

A QIF may not raise capital from the public through the issue of debt securities. However, the Financial Regulator does not, in principle, object to the issue of notes by authorised collective investment schemes, on a private basis, to a lending institution to facilitate financing arrangements. Details of the note issue should be clearly provided in the prospectus.

11. Title of a QIF/sub-fund

The name of the QIF/sub-fund must not be misleading. Where the name intends to reflect the investment policy of the QIF/sub-fund, it should be consistent with the stated policy.

As a general principle, the only entity whose name¹ may be included in the title of a QIF/sub-fund is that of the promoter.

The use of certain entity names are permitted subject to the following conditions:

1. The name of an investment manager or investment adviser, in conjunction with the name of the promoter, provided that:
 - the name of the promoter is in a more prominent position;
 - the role of the investment adviser is outlined in the prospectus; and
 - in the case of a QIF title, the investment manager/investment adviser is appointed to the QIF as a whole.
2. The sole name of an investment manager/sub-investment manager provided that the investment manager/sub-investment manager is majority owned by the promoter or by the parent of the promoter.
3. The name of a distributor, in conjunction with the name of the promoter, provided that:
 - the distributor is the sole distributor of the QIF/sub-fund; and
 - the name of the promoter is in a more prominent position.

¹ Reference to name includes brand name.

12. Appropriate Expertise

In the case of QIFs which will invest in private equity or property investments, the applicant must confirm that the entity/person(s) who will carry out investment management has appropriate expertise in relation to the particular area of investment.

13. Valuation of Assets

All assets should be valued in accordance with Guidance Note 1/00. Where a QIF proposes to value assets under alternative provisions, these must be cleared with the Financial Regulator in advance. Guidance Note 1/00 does not currently refer to valuation of private equity or property type investments. In the case of these assets, it is acceptable to refer to the valuation standards established by recognised professional bodies as appropriate, for example the European Venture Capital Association or the Royal Institute of Chartered Surveyors.

14. QIFs with Limited Liquidity

In order to be authorised as open-ended funds, QIFs must provide redemption facilities on at least a quarterly basis.

QIFs that offer redemption and/or settlement facilities on a less than quarterly basis are classified as investment funds with limited liquidity. Such QIFs are not subject to any regulatory parameters in terms of dealing frequency and minimum redemption quotas. A QIF with limited liquidity is not required to indicate this status on the cover of the prospectus. A QIF with limited liquidity which provides redemption facilities, at the request of unitholders, at least annually may include a reference to “open-ended with limited liquidity” on the prospectus cover. The limited nature of the redemption facilities must be clearly outlined in the body of the prospectus.

15. Closed-ended schemes

A QIF established as a closed-ended scheme must comply with the approval requirements of the European Union Prospectus Directive implementing legislation.

16. Dealing Procedures

In the case of QIFs which propose to provide for the electronic or telephonic receipt of subscription and/or redemptions, the applicant must confirm that the management company or administrator has received approval from the Financial Regulator to provide such services.

17. Warehousing

Proposals to acquire assets pursuant to a warehousing arrangement must be fully disclosed, including details of any fee payable in relation to such arrangements. Assets may only be acquired at market value or cost price (where this is lower than current market value).

18. Share Classes

A QIF/sub-fund established with separate share classes must ensure that all share classes have the same dealing procedures and frequencies.

19. Approval of new sub-funds and other post Authorisation Amendments

Applications for new sub-funds of umbrella QIFs will be approved on receipt of a complete application form, which includes appropriate confirmation in relation to the contents of the relevant documentation.

In general, amendments to QIF documentation, post authorisation, will be approved on receipt of a complete notification form, which includes appropriate confirmation in relation to the amendments.



FINANCIAL REGULATOR
Rialtóir Airgeadais

PO Box No 9138
College Green,
Dublin 2, Ireland

T +353 1 410 4000
Consumer help-line
lo call 1890 77 77 77
Register of Financial Service Providers help-line
lo call 1890 20 04 69
F +353 1 410 4900
www.financialregulator.ie
www.itsyourmoney.ie
Information Centre: 6-8 College Green, Dublin 2

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