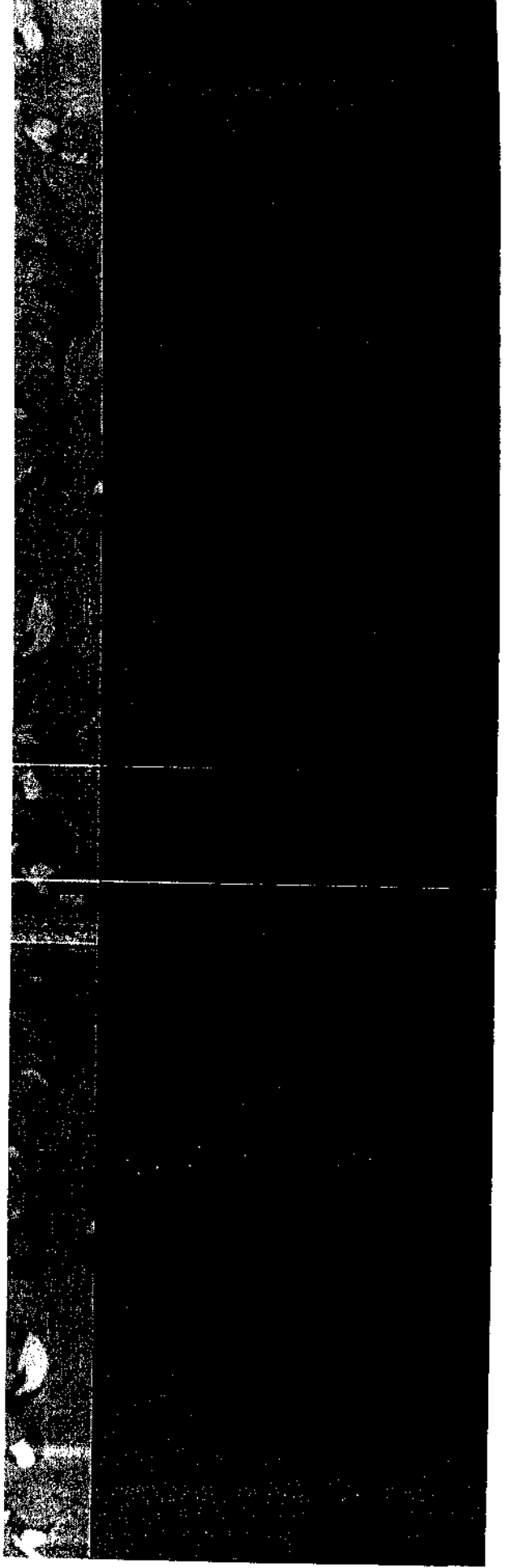




IRISH FINANCIAL SERVICES
REGULATORY AUTHORITY

UCITS III - The Management Company Directive

Financial Institutions and Funds Authorisation
8 December 2006



LEGISLATIVE BACKGROUND

- **February 2002** – Council Directive 85/611/EEC was amended by two amending directives
- **The Product Directive**
- **The Management Company Directive**
 - formal authorisation of management companies in their own right
 - expanded the scope of activities which they are permitted to undertake
 - the simplified prospectus

IMPLEMENTATION OF THE MANAGEMENT COMPANY DIRECTIVE

- **21 October 2003** – S.I. 497 - Amending Regulations to the existing UCITS Regulations 2003
- **Schedule 6 and Regulation 17 (3)** - specific requirements on Organisation Structure
- **Updated UCITS Notices and Guidance Notes**

IMPLEMENTATION OF THE MANAGEMENT COMPANY DIRECTIVE

- Consultation Paper issued to the industry in May 2003
- Draft Notices Dealing with authorisation requirements including prudential rules and codes of conduct together with a draft guidance note on the organisation of management companies issued in March 2004
- Subsequent Consultation Paper issued December 2005

REGULATORY REGIME PRIOR TO THE MANAGEMENT COMPANY DIRECTIVE

✓ (Non-UCITS wgt com 也 有 字 樣 非 是)
• **UCITS Managers were approved as part of the UCITS authorisation process but no formal authorisation in their own right.**

- two Irish resident directors
- minimum capital requirement
- registered and head office in the State
- submit annual and semi-annual reports

2 & equivalent
USA, Taiwan...
delegated to
(EU directive)

- **Many companies delegated investment management and administration to third parties**
- **Ultimate responsibility lay with the Board of Directors of the Manager**



PERMITTED ACTIVITIES OF THE MANAGEMENT COMPANY

- **Collective Portfolio Management ("CPM")**
- **Individual Portfolio Management ("IPM")**
Cannot engage solely in this activity
- **Non-core activities**
 - investment advice
 - * safekeeping and administration

• **CPM - Non-Passportable**

French wgt co can't $\frac{1}{2}$ Irish funds. vice versa

• **IPM - Passportable**

Éil UICs & mgt company 1/2-1/2 located in Ireland
White Paper passport: French co 1/2 Irish fund (all the Member States)

CONSIDERATIONS

- Irish Management Structures already met with much of the UCITS III Requirements
- Financial Regulator shall not authorise a management company unless it is satisfied:
"as to the organisational structure and management skills of the proposed management company and that adequate levels of staff and expertise will be employed to carry out its proposed activities".

✓
LUX
Moreover, Regulation 17 (3) requires that "conduct of the business of the management company must be determined by at least two persons who are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company."

IRISH IMPLEMENTATION OF MANAGEMENT REQUIREMENTS

- **List of eight management functions**
 - Decision Taking
 - Monitoring Compliance
 - ✓ Risk Management
 - Monitoring Investment Performance
 - Financial Control *book record, annual reports*
 - Monitoring Capital
 - Internal Audit
 - ✓ Supervision of Delegates

THREE ACCEPTABLE FRAMEWORKS

1. EXECUTIVE BOARD MEMBERS

- Allocate responsibility for these functions to a minimum of two named directors/Board of Directors collectively
- Named individuals must receive detailed reporting
- Board meetings held at least quarterly
- Formal appointment of Chairman to co-ordinate management functions
- Formal adoption of a Business Plan/Programme of Activities documenting:
 - responsibility for management functions
 - procedure for discharging them

1. EXECUTIVE BOARD MEMBERS ...

- The Financial Regulator requires that procedures for monitoring performance of management functions as a condition of authorisation
- Such procedures should:
 - detail the director(s) with responsibility for the management function.
 - be comprehensive to allow for effective monitoring of the function.
 - reports received at least monthly and more frequent depending on nature of the management function.
 - detail steps taken in the event of an investment breach for example
 - the procedures should draw a distinction between circumstances where the director may make appropriate action and those where escalation to the board is required.

2. EMPLOYEES

- The Management Company may recruit employees in Ireland to carry out the management functions specified above.

two days to carry out activities
** minimum requirement for employees*

3. SECONDEES

- The Management Company may recruit individuals from an Irish service provider, on a secondment basis, to carry out the management functions.
- These individuals must be located in the State.
- The Financial Regulator will require a contract of employment between the management company and the secondees. This contract must identify potential conflicts of interest and how these will be addressed.
- **Board still ultimately responsible.**

DELEGATES

- In relation to supervision of delegates, the Financial Regulator requires details on how the firm will review on a periodic basis the services provided by the delegate, the performance of these services and the preparation of reports.
- The Financial Regulator requires a formal statement of responsibility from the board of the management company in relation to the management functions.

APPLICATION REQUIREMENTS

- **Prudential rules and codes of conduct**
- **Business plan**
 - financial projections for a three-year period including P&L and Balance Sheet
 - demonstrate compliance with the initial and on-going capital requirement.
- **Probity and Competence of directors and senior management** - Individual Questionnaire
- **Qualifying Shareholders**

OPERATING REQUIREMENTS

- **Capital:** Ongoing capital requirement based on funds under management and Capital Adequacy Directive
- **Prudential Rules / Codes of Conduct:** Member States must provide for these in relation to CPM. MIFID rules apply where managers engage in IPM
- **Delegation:** A number of specific rules apply

SELF MANAGED INVESTMENT COMPANIES

- With the exception of details of their qualifying shareholders all requirements specified above are sought in respect of UCITS Investment Companies which do not appoint a management company.

