




MAPLES

A horizontal banner image showing the Union Jack (UK flag) and the European Union flag (blue with yellow stars) waving against a clear blue sky. The Union Jack is on the left, and the EU flag is on the right, with the two flags overlapping in the center.

Brexit Webinar: Inside the Final Six Months A Focus on Ireland

3 October 2018

Introduction and Agenda

1. “Why Ireland?” and Key Structuring Considerations
2. Distribution and Passporting Options
3. The Regulatory Regime and Authorisation Process
4. The Substance Question - Hosted and Outsourcing Solutions
5. Tax - The Five Key Issues
6. Looking Ahead to March 2019
7. Q&A



“Why Ireland?” and Key Structuring Considerations

Peter Stapleton

Partner, Head of Investment Management Group

Maples and Calder

Why Ireland?

LEGAL AND REGULATORY FRAMEWORK

- EU Member State, Eurozone, OECD and FATF Member Country
- Common law system
- Pro business state/government

TAX

- Corporation tax rate of 12.5% for trading companies
- EU-approved stable tax regime, with access to extensive treaty network and EU Directives
- Attractive holding company regime
- Specific incentives for executives relocating to Ireland

Why Ireland?

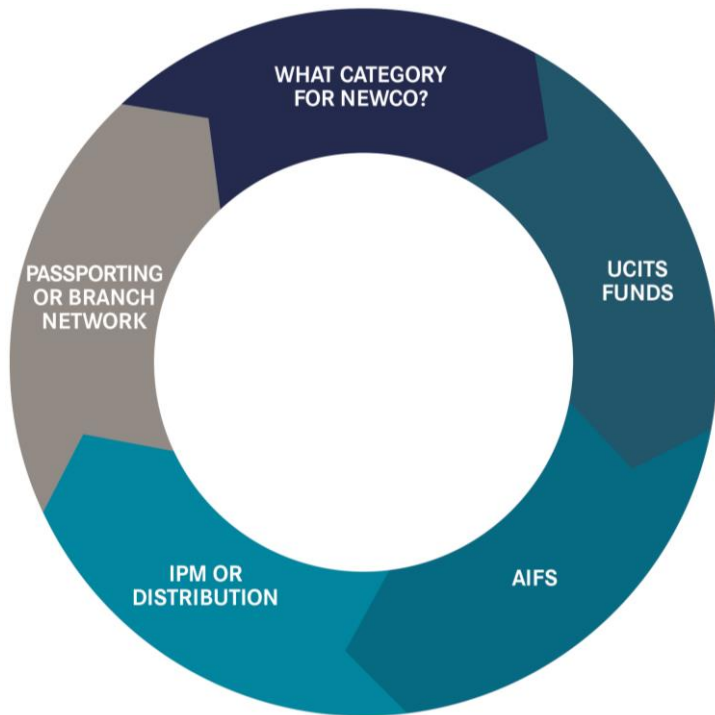
LOCATION

- Favourable time zone and excellent transport links for US and UK headquartered firms
- Infrastructure including: skilled workforce, residential and commercial property availability
- Leading global centre for technology and financial services

BREXIT EXPERIENCE

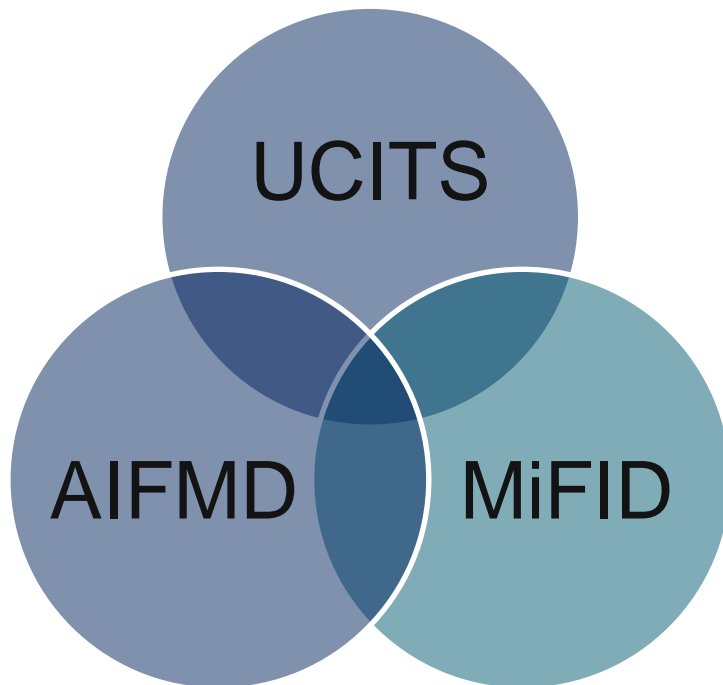
- Existing world-class fund ecosystem
- Material alignment of CP86 and ESMA Opinions
- Significant share of UK market

The Decision Wheel



- What products and service lines do you need to cover?
- How many regulated entities in Ireland?
- Interaction and delegation with UK and global affiliates?
- Group structure?

Separate Entities, Dual-Auth or Hybrid Model



- UCITS and AIFMD are highly aligned
- Strong trend towards dual authorisations
- Ability to add MiFID “top-ups” is very useful but does have limitations
- Not the same levels of alignment between UCITS/AIFMD and MiFID

Initial Brexit Project Matrix

	Self-Managed	Single ManCo	Dual ManCo	Dual ManCo + MiFID “Top-Ups”	MiFID Firm
Timeframes	3-4 months	4-6 months	~6 months	6-9 months	6-9 months
Legislative Framework	UCITS or AIFMD	UCITS or AIFMD	UCITS + AIFMD	UCITS + AIFMD + MiFID	MiFID
Regulatory Framework	CP86	CP86	CP86	CP86 + MiFID Guidelines	MiFID Guidelines
Substance Requirements*	2 Irish Directors + DPs	2 Irish Directors + DPs	2 Irish Directors + DPs	2 Irish Directors + DPs + MiFID staffing	Variable
Product Cover and Reg. Gaps	Single UCITS or AIF only	Multiple UCITS or AIFs	Multiple UCITS + AIFs	Multiple UCITS + AIFs + limited MiFID**	Full scope MiFID services
Regulatory Capital	Own Funds	UCITS or AIFMD requirements	UCITS + AIFMD requirements	UCITS + AIFMD + MiFID requirements	MiFID requirements

* Varies according to nature, scale and complexity. CBI does not issue any hard numbers on minimum number of Directors or FTEs (other than in the area of time commitments)

** UCITS and AIFMD also differ on the available top-ups, e.g. in the area of RTO.



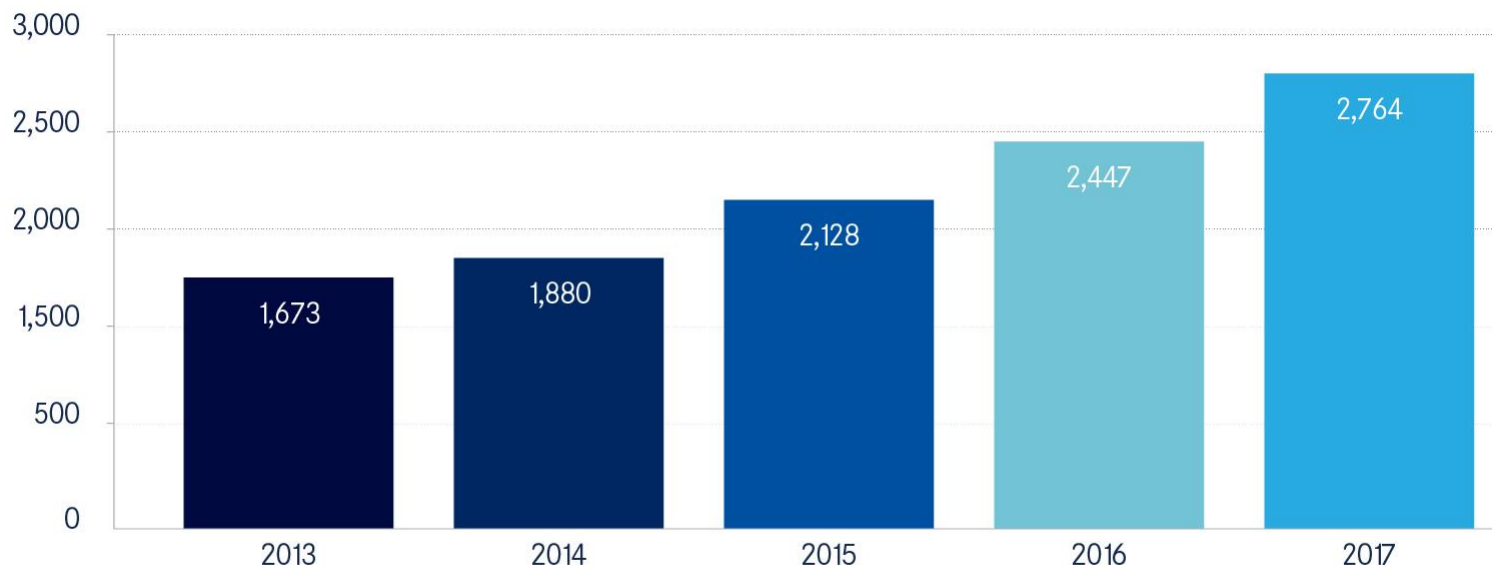
Distribution and Passporting Options

Emma Conaty

Head of Global Registration Services

Maples and Calder

No. of Irish Funds Registered for Sale in the UK



Sale of Irish and EU27 Funds in UK post-Brexit

1. Hope for the best but prepare for the worst
2. NPPRs:
 - (a) Co-operation agreements?
 - (b) Lack of accessibility in certain EEA member states
3. Temporary Permissions Regime



The Regulatory Regime and Authorisation Process

Adam Donoghue

Partner, Investment Management Group

Maples and Calder

Regulatory Oversight Requirements

1. Clear and comprehensive CBI guidance applicable to all Irish ManCos
2. Board of directors: At least 2 Irish residents. Minimum time commitment criteria
3. Designated Persons (DPs): senior and experienced individuals responsible for 6 “key managerial functions”:

Investment management	Fund risk management
Operational risk management	Regulatory compliance
Distribution	Capital and financial management

Regulatory Oversight Requirements

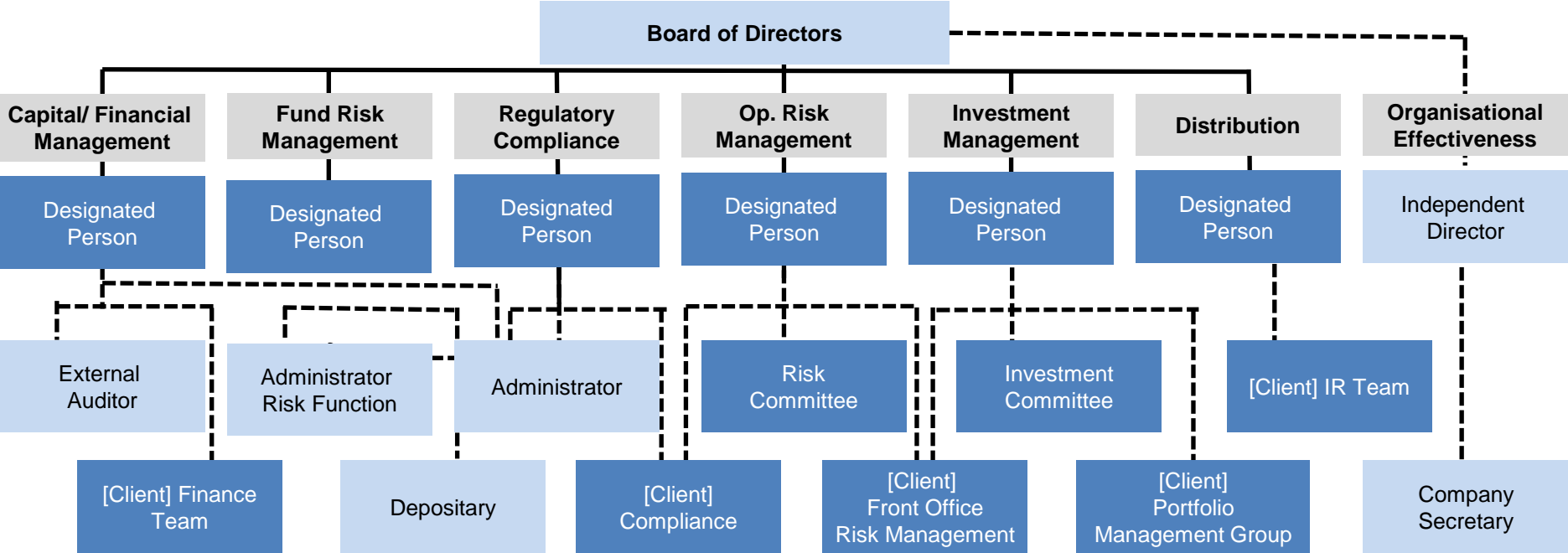
1. DP role more involved than typical fund director. More frequent and granular oversight of service providers
2. CBI more focussed on seniority and expertise than location, so a pragmatic approach:
 - (a) Director can also be appointed as DP
 - (b) Same person can be DP for more than one function
 - (c) Can (i) employ internally, (ii) second/dual hat from affiliates, (iii) outsource to third parties, or (iv) a mix
 - (d) Can combine individuals based in Ireland, UK, US etc.
 - (e) Can utilise junior internal resources to support the DP

Regulatory Substance Requirements

1. No CBI minimum Irish headcount for ManCo, provided that:
 - (a) at least half of directors reside in EEA
 - (b) at least half of the functions performed by at least 2 EEA-resident DPs
2. Impact of ESMA Opinions? CBI comfortable no material change needed, as Opinions influenced in parts by Irish framework
3. However, definite trend towards CBI requiring higher individual time commitments from DPs
4. Ultimately no “one size fits all”, will depend on nature, scale and complexity of business model

Sample ManCo Structure

Key: External resources
 Internal resources



Authorisation Process

1. Initial face to face meeting with CBI to introduce and discuss plans
2. Key Facts Document in some cases to address high-level concerns
3. Formal application: timing depends on completeness and speed of responses
4. Enhanced authorisation regime available for more straightforward models
5. Trend of using third party ManCos to accelerate solution



The Substance Question - Hosted and Outsourcing Solutions

Catherine Lane

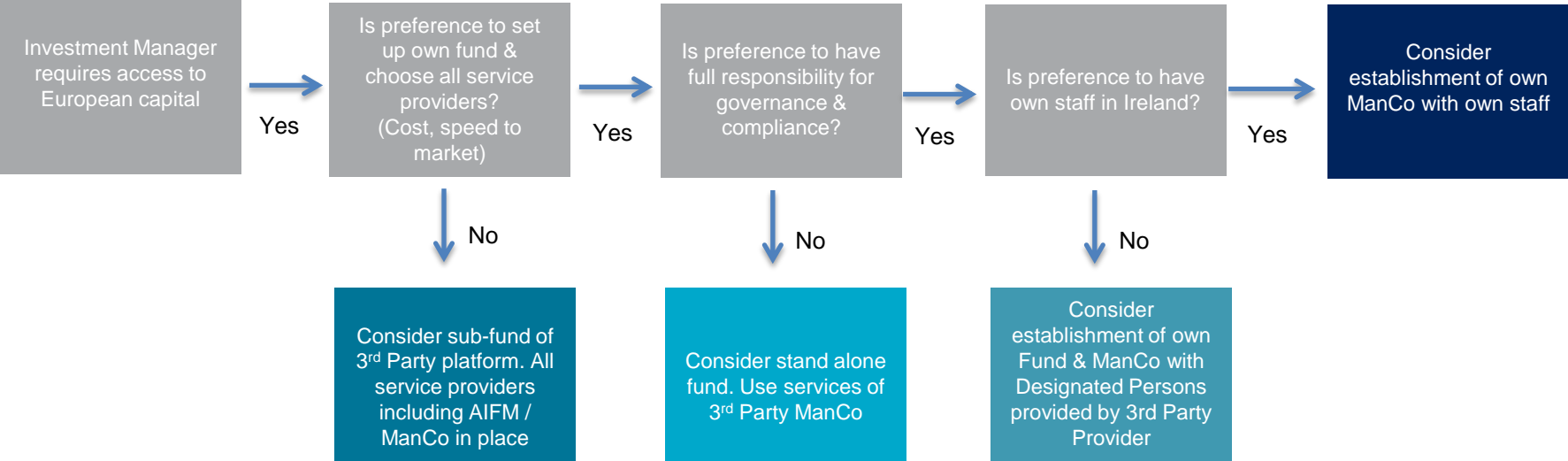
Senior Vice President

MPMF Fund Management

Structuring Options + Solutions



Case Study Decision Process



Operating Models

Platform: AIFM/UCITS

- **Facilitates:** Access to EU capital
- **Outsources:** Established Board of Directors & corporate governance regime
- **Saves:** Need for additional headcount
- **Re-focuses:** Investment management & distribution
- **Provides:** Regulatory & cost efficiencies
- **Delivers:** Simple, transparent structure. Segregated sub-fund with separate documentation

Hosted: AIFM/UCITS

- **Facilitates:** Access to EU capital
- **Outsources:** Governance & compliance burden
- **Saves:** Need for additional headcount
- **Re-focuses:** Investment management & distribution
- **Provides:** Regulatory & cost efficiencies. Regulatory cap/Annex IV/PII
- **Delivers:** Investor reassurance. CBI approved risk management framework/oversight of delegates

Delegation: AIFM/UCITS

- **Supports:** Functional support to fund board
- **Substance:** CBI authorised designated persons
- **Retain:** Branding
- Benefits include retaining control whilst leveraging industry leading practices

CP86

Pursuant to CP86 – Fund Boards must ensure Six Key Management Functions are Discharged

Organisational Effectiveness
Director

1. Regulatory Compliance
2. Fund Risk Management
3. Operational Risk Management
4. Investment Management
5. Capital and Financial Management
6. Distribution



Tax – The Five Key Issues

Andrew Quinn

Partner, Head of Tax Group

Maples and Calder

Tax – The Five Key Issues

1. How the ManCo is taxed
2. Impact of the ManCo on the funds it manages
3. Personal tax – how Irish and UK based personnel working for the ManCo are taxed
4. UK tax considerations
5. VAT

How the ManCo is Taxed

1. Irish company taxed at 12.5% on the worldwide profits of an Irish trade, other profits at 25%
2. Requirements to demonstrate an Irish trade is being carried on
3. How taxable profits are calculated
4. Dividend withholding tax – exemptions
5. Interest withholding tax – exemptions

Impact of the ManCo on the Funds it Manages

1. Irish Investment Management Exemption
2. Non-Irish funds should not be taxed in Ireland because of the activities of a regulated Irish manager
3. International Tax Considerations
 - (a) OECD BEPS / Action 6 on “tax treaties” – principal purpose test or PPT
 - (b) OECD guidance on the tax treaty entitlement of alternative investment funds – three real life case studies
 - (c) Helpful from a substance perspective to have an Irish based manager

Personal Tax

1. Irish income tax, USC and PRSI
2. General rule – if working in Ireland, taxed in Ireland ... but there are important qualifications!
 - (a) UK / Ireland tax treaty and Irish Revenue published practice on short term visits by overseas / UK personnel – keep records
 - (b) Special assignee relief programme (SARP) for overseas / UK staff – certain relocation expenses and school fees covered
3. UK based personnel
4. Carried interest arrangements for senior personnel
5. Common travel area (CTA) between Ireland and the UK – freedom of travel

UK Tax Considerations

1. Could there be a UK permanent establishment / UK branch of the ManCo?
2. This will depend on the fact pattern
 - (a) What UK based personnel are doing for the ManCo
 - (b) UK / Ireland double tax treaty
3.
 - (a) Adopt written company protocol to govern arrangements between UK and Ireland / transfer pricing report
 - (b) Formal procedures to review adherence to protocol and maintain records

VAT

1. Services supplied by the ManCo:
 - (a) Services supplied to non-Irish funds
 - (b) Services supplied to Irish funds
2. VAT recovery position for ManCo
 - (a) Irish Revenue practice regarding VAT recovery by investment manager
3. Treatment of services supplied to the ManCo
 - (a) Irish Revenue Statement of Practice on seconded employees
4. Treatment of delegated services by the ManCo
 - (a) Tripartite arrangements



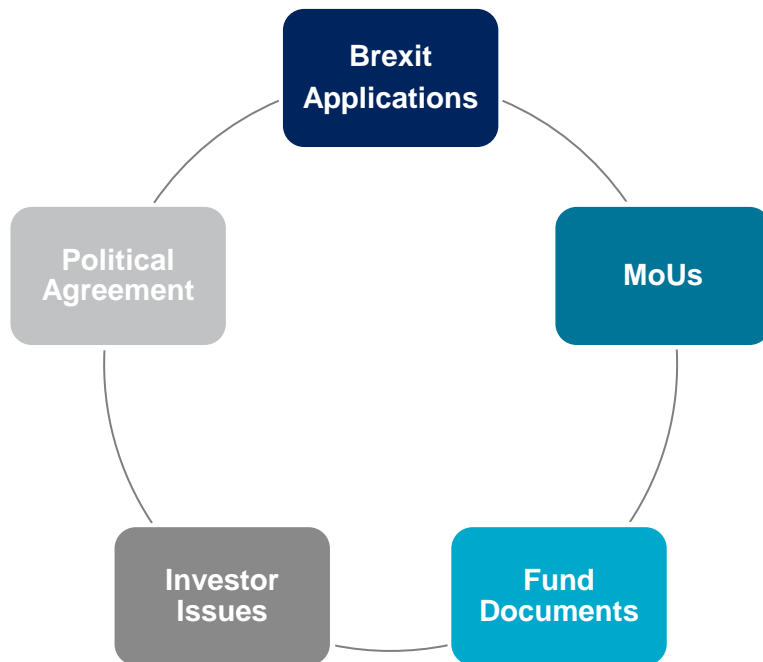
Looking Ahead to March 2019

Peter Stapleton

Partner, Head of Investment Management Group

Maples and Calder

Looking Ahead to March 2019



- Countdown to 29 March 2019!
- How does the deadline impact each of these issues?

Further Resources – Maples Website

Brexit

- A Collaborative Approach

Our lawyers and professional advisers have been working on a collaborative basis with our clients and their international advisers since the date of the UK referendum to solve some of the most complex legal issues arising from Brexit. Our dedicated page brings you the latest in legal and regulatory developments on Brexit.



► Timeline



► People



► Resources



► Expertise

maplesandcalder.com/brexit

Q & A

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A horizontal banner image showing the Union Jack flag on the left and the European Union flag on the right, both waving against a clear blue sky. A dark blue horizontal band is overlaid across the middle of the image, containing the text "Global Knowledge. Expert Advice." in white.

Global Knowledge. Expert Advice.

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