

Types of Legal Structure: Common Contractual Funds or CCFs

Many multi-national pension schemes seek to achieve economies of scale and efficiency of operation by pooling pension fund assets into one entity. For such pooling to successfully take place it is imperative that the pooling vehicle is tax transparent (i.e. that the income and gains of such vehicle are treated as arising or occurring to the unitholders or investors and not to the vehicle itself) in order to ensure that the tax status of the pension schemes is not prejudiced and that the efficiencies of a pooling vehicle are not negated by detrimental tax treatment. CCFs are, under Irish law, tax transparent vehicles which may be established for such purpose.

CCFs are also used for asset pooling where investors are not pension funds but are institutions or other structures pooling their assets into a single fund vehicle.

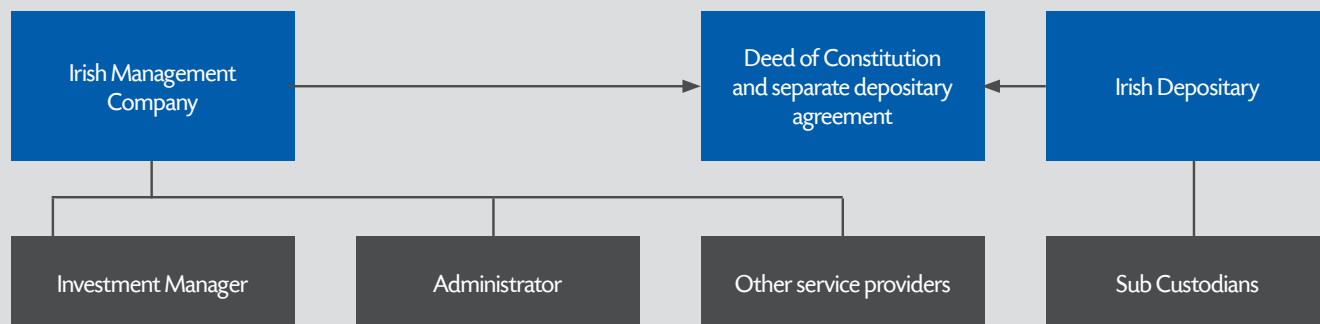
A CCF is formed by a contractual deed between the manager and the depositary whereby investors participate and share the property of the fund as co-owners of the assets of the fund. Each investor holds an undivided co-ownership interest as a tenant in common with the other investors. The CCF is an unincorporated entity without a separate legal personality. It cannot assume liabilities so the manager and the depositary contract on its behalf. A CCF may be a single fund or an umbrella fund. CCFs have the following characteristics:

- They are pooling vehicles established under the laws of contract namely by a deed of constitution to which a management company and depositary will be party.
- They are not body corporates and have no legal personality of their own.
- Participants otherwise known as unitholders in CCFs hold co-ownership rights in the property and assets of the CCF represented by units.
- The liability of unitholders shall be limited to the amount contributed or agreed to be contributed for units.
- The deed of constitution may be drafted to provide that income is distributed on an annual basis so as not to prejudice the tax transparency of the vehicle in certain jurisdictions.
- The depositary will be a party to the deed of constitution to specifically acknowledge its terms and the obligations at law of a depositary. The depositary is not a trustee and its obligations will be more precisely defined in a separate depositary agreement.
- CCFs generally facilitate direct access to tax treaty relief in the investor's home country.

CCFs may be established as UCITS and Qualifying Investor Alternative Investment Funds (QIAIFs).

A UCITS CCF is authorised by the Central Bank under the UCITS Regulations while a QIAIF is authorised under the Companies Act 2014.

Sample Structure:



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