

AVI Partners Capital Fund plc

A Guide to Irish Qualifying Investor Alternative Investment Funds (“QIAIFs”)

1 Introduction

- 1.1 This guide concentrates on the key features of a QIAIF which is Ireland’s flagship alternative fund offering, together with their Alternative Investment Fund Managers (“AIFMs”) and other key service providers.
- 1.2 AVI Partners Capital Fund plc (the “Fund”) was incorporated on 21 July 2011 with registration number 501463 and is an investment company established as an open-ended umbrella fund with variable capital and with segregated liability between sub-funds under the laws of Ireland as a public limited company pursuant to the Companies Act 2014 (as amended) and has been authorised by the Central Bank of Ireland (the “Central Bank”).
- 1.3 The Fund is currently made up of a single sub-fund, namely AVI Family Holding Companies Fund, with AUM of approximately €5m. Investors in this sub-fund consist of AVI staff, family & friends.
- 1.4 QIAIFs can be structured in various different forms. AVI Partners Capital Fund plc is structured as an Irish Collective Asset-management Vehicle (“ICAV”). See Section 2 for further details.
- 1.5 The structure of a simple QIAIF is set out in Schedule 1.
- 1.6 A summary of the key features is set out below in tabular form with some of these points elaborated on in greater detail in the rest of this guide.

The QIAIF at a Glance	
Regulatory Regime	Regulated by the Central Bank pursuant to AIFMD.
Available Legal Forms	Corporates (ICAV and PLC), Partnerships (ILP), Trusts (Unit Trusts) and Tax Transparent (CCFs).
Available Structures	QIAIFs can be structured as single funds or as umbrella funds with segregated sub-funds. They can also be established as part of global master-feeders, co-investment or joint-venture structures and use a full range of SPVs and subsidiaries to hold investments.
Share Capital/Units	QIAIFs can issue multiple classes of shares/units with differing features and characteristics (e.g. fees etc.)
Eligible Investors	Qualifying Investors including "professional investors" under AIFMD and other categories of sophisticated investor permitted by the Central Bank.
Minimum Initial Investment	€100,000 or foreign currency equivalent (subject to certain exemptions for investments by the AIFM or connected persons).
Investment Management Fee	0.75% per annum.
Other Annual Costs	€80,000 (approximately)
Permitted Strategies	All major alternative investment fund strategies used by hedge funds, private equity, real estate funds, credit funds, funds of funds, managed accounts, master-feeders and hybrid structures are permitted.
Investment and Borrowing Restrictions	The Central Bank does not impose any material investment or borrowing restrictions on QIAIFs (although there is a requirement for a QIAIF formed as a PLC to spread risk).
Liquidity	QIAIFs can be structured as open-ended limited liquidity or closed-ended funds.
Timeline	The Central Bank will approve new QIAIFs within 24 hours of receiving a completed application pack. Post-authorisation matters (e.g. addition of new sub-funds, new share classes, documentation updates) also fall within this fast-track regime.
Distributions	QIAIFs can avail of the AIFMD marketing passport for distribution to EEA investors and can be sold in all major non-EEA jurisdictions subject to compliance with local securities laws.
Substance and service provider requirements	QIAIFs (i) established as an ICAV or PLC or (ii) an Irish management company appointed to a QIAIF must have at least two Irish resident directors. They must appoint a local depositary, administrator, legal advisor and auditor.
Taxation	As a general rule QIAIFs are not subject to tax in Ireland on any income or gains they realise from their investments and there are no Irish withholding taxes in respect of distributions, redemptions or transfers of units by or to non-Irish investors provided certain conditions are met.

2 Legal Structures

2.1 As noted above, a QIAIF may be established in a variety of legal forms, including as an Irish collective asset management vehicle ("**ICAV**").

2.2 ICAV

- (a) The ICAV is a corporate fund structure which was introduced by the Irish Collective Asset-management Vehicles Act 2015 ("**ICAV Act**"). The Central Bank of Ireland ("**Central Bank**") is the sole registration and authorisation body for an ICAV and an ICAV is not permitted to carry on business as an ICAV unless it has been registered and authorised by the Central Bank. Pursuant to the ICAV Act, it is possible to structure the ICAV as an umbrella fund with statutorily recognised segregation of liability between the sub-funds of the same ICAV.
- (b) The ICAV has its own specific legislative code and will not be impacted by amendments to certain pieces of European and Irish company legislation which are targeted at ordinary companies rather than investment funds. This typically results in a more straightforward set of legal rules for ICAVs and lower administration/compliance costs.
- (c) An ICAV has a distinct and separate legal personality, may enter into contracts itself as a corporate entity and is represented by its board of directors. The board retains overall responsibility for managing the ICAV. However, day-to-day activities are delegated to the AIFM (where the AIFM is an external entity), which in turn may delegate functions to various specialist service providers such as an administrator.
- (d) A significant and important feature of the ICAV is that it may elect to "check-the-box" which allows it to be treated as a partnership or a disregarded entity for US tax purposes, putting the ICAV on a par with the tax election available for Luxembourg SICAVs. This has proven attractive to US managers looking to establish Irish domiciled funds. Specific US tax advice should be taken in making this decision.
- (e) The constitutive document of the ICAV is the Instrument of Incorporation ("**IOI**"). Where changes need to be made to the IOI there will, unlike the PLC, be no requirement to obtain prior investor approval provided the depositary certifies that changes to the IOI do not prejudice investors' interests.

3 Investor Eligibility/Minimum Subscription

3.1 The QIAIF is the most flexible form of Irish regulated fund with the fewest regulatory restrictions. As a result, the Central Bank restricts its availability to sophisticated/professional investors, by applying minimum subscription and investor eligibility requirements as follows:

- (a) A minimum initial subscription of €100,000 per investor. (This minimum may be aggregated across a number of sub-funds in the same umbrella vehicle, but institutions may not group amounts of less than €100,000 for individual investors unless pursuant to a fully discretionary investment mandate.); and
- (b) An investor must demonstrate that it meets the 'qualifying investor' criteria by: (a) being a professional client within the meaning of MiFID; (b) receiving an appraisal from an EU credit institution, MiFID firm or UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment; or (c) by confirming in writing that: (i) it has the necessary knowledge of and

experience in financial and business matters to enable it to evaluate the prospective investment; or (ii) the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the QIAIF.

- 3.2 Qualifying investors must self-certify that they meet these criteria and that they are aware of the risk involved in the proposed investment and of the fact that, inherent in such investments, is the potential to lose the sum invested. Exemptions from the above 'qualifying investor' criteria and minimum subscription requirements can be granted to certain categories of knowledgeable investors including the directors of the QIAIF, the investment manager and its senior employees, subject to those individuals providing similar confirmations in writing to the QIAIF.

4 Post-Authorisation Amendments

- 4.1 Following the launch of a QIAIF, changes to its investment objective or material changes to its investment policy require investor approval (majority vote). Where applicable, such material changes require notification in each of the pan-EEA Member States where the QIAIF is approved to market to under Article 32(7) of AIFMD.

- 4.2 Other changes in fund documentation for QIAIFs do not generally require prior approval but simply need to be filed with the Central Bank and where applicable also notified to each of the pan-EEA Member States where the QIAIF is approved to market.

5 Service Providers to QIAIFs

5.1 AIFM

- (a) AIFMD requires that each AIF must identify an AIFM, which is the entity primarily responsible for the investment management of the AIF. The obligations applicable to the AIFM will differ depending on whether or not the AIFM is located in the EEA.

5.2 Depositary

- (a) The depositary is the entity which is responsible under AIFMD for the safe keeping of the assets of the QIAIF, as well as other specific fiduciary and operational functions such as cash flow monitoring. This is a highly regulated role and entities seeking to fulfil this role for Irish QIAIFs must be located in Ireland to ensure that they can be subject to adequate supervision. Only entities with the appropriate expertise and experience (and which meet the AIFMD eligibility requirements) will be authorised for this role. The depositary is required to report annually on the conduct of a QIAIF and this is included in the QIAIF's financial statements.
- (b) A depositary may delegate certain safekeeping functions to third party sub-custodians to the extent permitted by AIFMD, and in general (unless it fulfils the very specific conditions of AIFMD); it remains liable for the actions of those sub-custodians.

5.3 Administrator

- (a) An Irish regulated administrator must be appointed to provide administrative and accounting services to the QIAIF. Irish authorised administrators are subject to strict outsourcing rules. Outsourcing is permissible provided that certain core administration activities (including verifying and releasing net asset value data) are not outsourced and are carried out in Ireland.

5.4 Investment Managers

- (a) Where the AIFM delegates certain investment management functions, a separate investment manager may also be appointed. The Central Bank requires that an investment manager must be subject to prudential regulation. Where the investment manager is located outside of Ireland, the Central Bank must be satisfied that the firm is

appropriately regulated in its home jurisdiction.

6 Tax Regime

6.1 The Irish tax regime applying to regulated funds is one of the main reasons why Ireland is such an attractive international fund domicile. The primary legislative basis for the Irish tax regime is the Taxes Consolidation Act 1997 (as amended) ("**TCA**"). No major change in the tax treatment of regulated funds is anticipated in the foreseeable future.

6.2 Authorised investment undertakings (ICAV, PLC and unit trust)

- (a) Ireland offers an efficient, clear and certain tax environment for authorised investment funds known as the 'gross roll-up regime'. As a general rule, investment funds (which fall within the definition of an "investment undertaking" for the purposes of section 739B, TCA) are, broadly, not subject to tax in Ireland on any income or gains they realise from their investments and there are no Irish withholding taxes in respect of distributions, redemptions or transfers of units by or to non-Irish investors provided certain conditions are met.
- (b) In addition, no stamp duty is payable in Ireland on the issue, transfer, repurchase or redemption of units in a regulated Irish fund. The Irish tax system is therefore simple for international investors – no Irish tax for non-residents, payments on redemption are made gross and investors account for tax in their own jurisdiction according to their domestic tax status.

6.3 US Taxation

Perhaps one of the most significant advantages of the ICAV relates to its tax treatment for US purposes. The ICAV may elect to "check-the-box" to be treated as a tax transparent partnership or a "disregarded entity" (rather than an opaque "per se corporation") for US federal tax purposes. While the ICAV may make the "check-the-box" election, it will still generally be treated as a corporate vehicle in most other jurisdictions. This may allow the ICAV to utilise the double tax treaties that Ireland has entered into, subject to the provisions of each treaty and the rules in the relevant treaty partner country.

Schedule 1

Typical QIAIF Umbrella Structure

