



K&L GATES

Establishing an ETF in Ireland

A Guide for Asset Managers

Introduction to Exchange-Traded Funds

Exchange-traded funds (ETFs) have become increasingly popular with investors, resulting in a growing number of traditional fund sponsors and entrepreneurs exploring entry into the ETF market. Entering and operating in the ETF market, however, requires an understanding of the unique regulatory requirements applicable to ETFs.



In order to assist clients and other ETF industry participants in understanding such requirements, we have set out in this guide an explanation of what an ETF is, provided an overview of the ecosystem in which it operates, and an explanation of the key drivers for growth and success of these products on a global, and European, scale.

What Is an ETF?

ETFs are exactly as the name implies: funds that trade on exchanges. In the majority of cases, they track a specific index.

ETFs are unique from other collective investment schemes as they can be traded intraday on the majority of global stock exchanges and have real-time pricing in a manner similar to that of any other publicly traded security or commodity. This feature distinguishes an ETF from traditional mutual funds, which only provide for direct subscriptions and redemptions of their shares on a periodic basis using the net asset value per share.

ETFs Background and Growth

In Europe, ETFs are typically corporate vehicles established as Undertakings for Collective Investment in Transferable Securities (UCITS) pursuant to the UCITS Directive. UCITS are open-ended collective investment schemes established and authorised pursuant to EU law, as implemented in the member states of the EU. ETFs may be established as a single (standalone) fund or as an umbrella fund comprising one or more subfunds, each subfund with a different investment objective and policy. Irish ETFs may also have listed and unlisted share classes within the same UCITS structure.

Perceived as safe and well-regulated investments, once authorised, a UCITS can be marketed and sold to investors throughout the European Economic Area (EEA). This is commonly known as the “UCITS passport,” and it enables fund promoters to create a single product for the entire EEA rather than having to establish an investment fund product on a jurisdiction-by-jurisdiction basis.



US\$2.41
trillion

Assets invested in European
ETFs.¹



15.5%
Forecasted rise
annually until 2029.²



US\$4.5
trillion

Expected reach in AUM by
2029.³

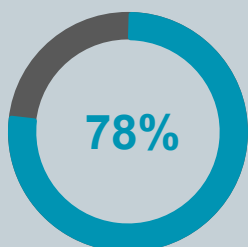
¹ETFGI - reports that assets invested in the ETFs industry in Europe reached a new record of US\$2.41 trillion at the end of February 2025.

²PwC – ETFs 2029: The path to US\$30 trillion (ETF survey 2025).

³Ibid.

Why Ireland as a Domicile for ETFs?

Since the launch of the first European ETF in 2000, Ireland has played a significant part in the evolution of the European ETF market and has been at the forefront of product, operational, and infrastructure development of ETFs.



Ireland is the **leading European domicile for ETFs**. Irish domiciled ETFs represent approximately **78%** of the total European ETF market.⁴



Ireland's regulator, the **Central Bank of Ireland (Central Bank)**, is well regarded for its **expertise, thought leadership, and approach to authorisation and supervision**. It is extremely cognisant of the aims and objectives of ETF promoters, current trends, and concerns within the ETF market and is deeply engaged with market participants to ensure that its regulation is appropriate for the ETF market.



Irish ETFs authorised by the Central Bank benefit from the same **beneficial tax structure** as other regulated funds established in Ireland. In summary, an Irish ETF is not subject to Irish taxation on any income or gains it may realise from its investments. Similarly, no withholding of taxes on the distribution of payments to investors should be applied.

⁴ PwC – ETFs 2029: The path to US\$30 trillion (ETF survey 2025).

What Types of ETFs Are There?

Passive ETFs ETFs were originally structured as passive ETFs. Passive ETFs aim to replicate the performance of a specific index and deliver returns closely aligned to the return of the index. Managers of passive ETFs track or replicate the performance of a specific market or index rather than attempting to outperform the corresponding index or portfolio.

Active ETFs Active management involves the manager making investment decisions for the ETF by frequently trading assets to outperform the index or market, thereby maintaining discretion over the composition of the portfolio compared to tracking an index. Active ETFs implement their own investment strategy and policy, aspiring to surpass the performance of the relevant index or market.

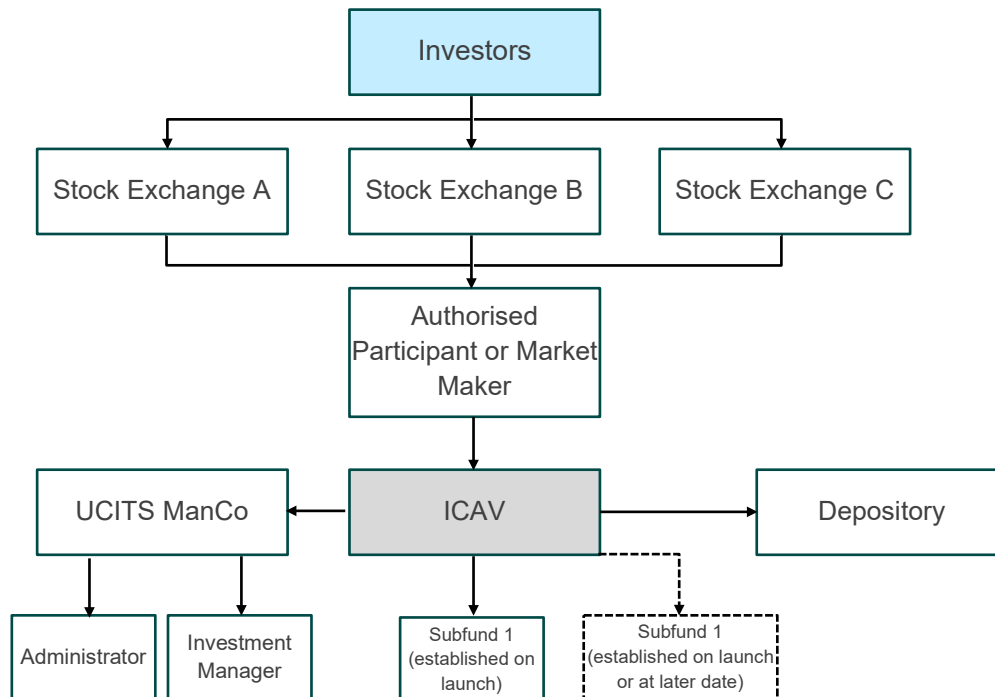
Physical ETFs A physical ETF invests directly in the constituents that make up an index, mirroring its weightings and concentrations, however, they are subject to compliance with the diversification limits applicable to UCITS. A primary advantage of the physical ETF is the absence of any counterparty risk in respect of direct investment.

Synthetic ETFs A synthetic ETF gains exposure to an index by virtue of a derivative, typically a swap, with a counterparty. It invests in financial derivatives where the counterparty provides the exact return of the underlying asset. A synthetic ETF can often be more cost effective than a physical ETF; however, they do carry counterparty risk and are still bound to the UCITS limits on counterparty exposure.

ETF Ecosystem in Europe

Typical Structure of an ETF

ETFs are typically established as Irish Collective Asset-management Vehicles (ICAVs) in Ireland. A typical ETF structure is illustrated below.



Exchanges

When establishing a European ETF, you will need to develop a listing strategy to determine on which exchanges your ETF will trade. Your listing strategy is typically driven by your target market and client type. Most managers typically start with two or three exchanges to attract investors.

Primary Market

Authorised Participants (APs) are responsible for creating and redeeming shares of the ETF in the primary market. APs are typically financial institutions that help keep the ETF's price aligned with the value of its underlying securities. Each AP has an agreement with an ETF issuer that

gives it the right (but not the obligation) to create and redeem ETF shares. APs may act on their own behalf or on behalf of market participants and are not compensated by ETF issuers.

Secondary Market

Market Makers (MMs) are key liquidity providers in the ETF ecosystem that ensure continuous and efficient ETF trading in the secondary market. MMs are typically brokers, dealers, or investment firms. They help match supply and demand of shares and work with the APs.

International Central Securities Depository

ETFs settle through the relevant International Central Securities Depository (ICSD), and the common depository's nominee will act as the registered holder of the shares. ICSD is the international settlement system connected to multiple national markets, e.g., Euroclear, Clearstream.

Benefits of ETFs for Investors



Access and Trading Flexibility

ETFs can be traded intraday on stock exchanges, providing liquidity and flexibility similar to stocks. This contrasts with mutual funds, which only trade at the end-of-day net asset value.



Transparency and Disclosure

ETFs can offer either full daily portfolio transparency, allowing investors to see the underlying holdings, unlike mutual funds which may only disclose holdings quarterly, or they disclose their portfolio holdings on a less frequent basis (commonly referred to as semi-transparent).



Tax Efficiency

ETFs are generally considered more tax efficient than mutual funds. In the United States, this is due to their “in-kind” creation and redemption process, which helps limit ETF capital gain distributions and investor taxes. In Europe, Ireland-domiciled ETFs benefit from a lower withholding tax rate on US equity dividends, thereby delivering better performance returns for investors.



Lower Costs

ETFs typically have lower expense ratios compared to mutual funds, leading to reduced total cost of ownership.



Diversification

ETFs provide exposure to a wide range of asset classes, sectors, and geographies, enabling diversified investment portfolios.



Liquidity

Owing to the built-in arbitrage mechanism, ETFs typically have higher daily liquidity than mutual fund shares, making them an attractive alternative for investors.

Key Considerations for Launching an ETF in Europe



Which structure?

Newly established ETFs are routinely set up in Ireland as ICAVs.



Which strategies?

- Equities
- Fixed income
- ESG
- Thematic
- Mixed asset



How many funds?

Market trend is to launch three or more ETF subfunds when establishing a UCITS ETF as an umbrella ICAV.



Which service providers to appoint?

UCITS management company, investment manager, depository, administrator, market maker or authorised participants, auditor, company secretary.



Which ETF regulations and requirements may apply?

- UCITS Directives and implementing regulations (e.g., the Irish UCITS Regulations)
- Central Bank UCITS Regulations
- Cross Border Distribution Regulations
- SFDR and Taxonomy Regulations
- ESMA: Guidelines (including Guidelines on ETFs and other UCITS issues), Q&As, and Common Supervisory Actions



What specific ETF operational capabilities do I need?

Capital markets, distribution functions, and a distribution functions team.



Which distribution channels?

- Institutional investors
- Retail Investors
- Advisers
- Platforms
- Brokers



What are the documents required?

- Instrument of incorporation
- Prospectus
- Supplement(s)
- Key information documents
- Key service provider agreements
- Authorised participant agreements
- Market making agreements
- Central Bank application forms
- Marketing materials
- Policies and procedures



Which exchange to list on?

- London Stock Exchange
- Euronext
- Xetra
- SIX
- Borse Italiana



What is the intended launch date?

Typically, it is a four- or five-month process for first launch of a UCITS ETF. Subsequent subfund launches are much faster (three or four months).

Tax Considerations

ETFs benefit from a neutral tax regime that applies to all funds regulated in Ireland, including:

Tax Efficient

Income and gains derived from investments are exempt from Irish tax for non-Irish resident and ordinary resident investors.

No Withholding Tax

No withheld taxes are applied on payments made to non-Irish resident investors or on units held in recognised clearing systems.

VAT Exemptions

The provision of certain standard services to Irish ETFs (e.g., investment management, administration, transfer agency, depository, etc.) are treated as VAT exempt in Ireland. To the extent that an Irish ETF incurs Irish VAT on certain services it receives (e.g., audit and legal fees), it may recover a portion of this VAT based on its recovery rate.

Tax Treaty Network

Ireland has a broad double tax treaty network spanning over 70 countries across the EU, Asia, the Americas, and the Middle East.

The Ireland and US double taxation treaty, in particular, works very well for Irish ETFs with structural advantages over other jurisdictions. For example, in Europe, mutual funds are typically subject to a 30% withholding tax on US equity dividends. However, Irish-domiciled ETFs are only subject to a 15% withholding tax.

Stamp Duty and Subscription Taxes

No stamp duty is levied on ETF units and there is no annual subscription tax for ETFs.

Disclosure Requirements

UCITS ETF Identifier

In order to make investors aware of the distinction between exchange-traded UCITS and traditional open-ended UCITS, a UCITS ETF is required to use the identifier “UCITS ETF,” which identifies it as an exchange-traded fund. If all the subfunds are UCITS ETFs, the labelling requirement applies at the subfund level and the UCITS may decide to apply it to the umbrella level also. However, if not all the subfunds are UCITS ETFs, the labelling requirement only applies to the relevant UCITS ETF subfunds.

Portfolio Transparency

Each UCITS ETF is required to disclose in the prospectus, key investor information document, and marketing communications, information relating to portfolio transparency and where information on the portfolio may be obtained, including where any indicative net asset value is published, if applicable.

Treatment of Secondary Market Investors

UCITS ETFs are required to make clear that shares purchased on the secondary market are generally not redeemable from the ETF.

However, the prospectus of the UCITS ETF is required to disclose the exceptional circumstances where investors who have acquired their shares on the secondary market have the ability to sell their shares directly back to the ETF at their net asset values.

Active ETFs

The prospectus of an actively managed UCITS ETF must make clear that the fund does not track an index and is actively managed by the fund’s manager. Information must also be provided on how the fund’s manager intends to meet its investment policy, including, where applicable, its intention to outperform an index.

Index Disclosure Requirements

The Central Bank imposes prospectus and subfund supplement disclosure requirements with respect to index-tracking UCITS and index-tracking leveraged UCITS.

Stock Exchange Requirements

Each exchange has its own individual requirements with respect to obtaining a listing which the UCITS ETF must meet.

Our Global ETF Platform

We have a large global ETF team comprising lawyers in Asia, Australia, Europe, and the United States. The practice is recognised globally by leading legal and business publications, including Chambers and Partners, Legal 500, *Fund Intelligence*, and *ETF Express*.

We represent index-based, leveraged, and actively managed ETFs, their sponsors, and boards of directors in all legal aspects of designing, developing, organising, registering, and operating ETFs. Our work includes ETFs that invest in equity and fixed-income securities as well as commodities-referenced exchange-traded products. Our ETF team monitors business trends and legal developments to help our clients remain competitive in a rapidly changing environment. Team members are well versed in the business, regulatory, and compliance issues surrounding ETF operations, including the share creation and redemption process, marketing, seed capital arrangements, share trading, portfolio management and index construction, and licensing. They also represent broker-dealers that serve as APs of ETFs and assist clients with cross-listings around the world.

We are also industry thought leaders, publishing timely articles and guides, and hosting webinars, conferences, and ETF Think Tanks covering a wide range of new and developing regulations and product types.

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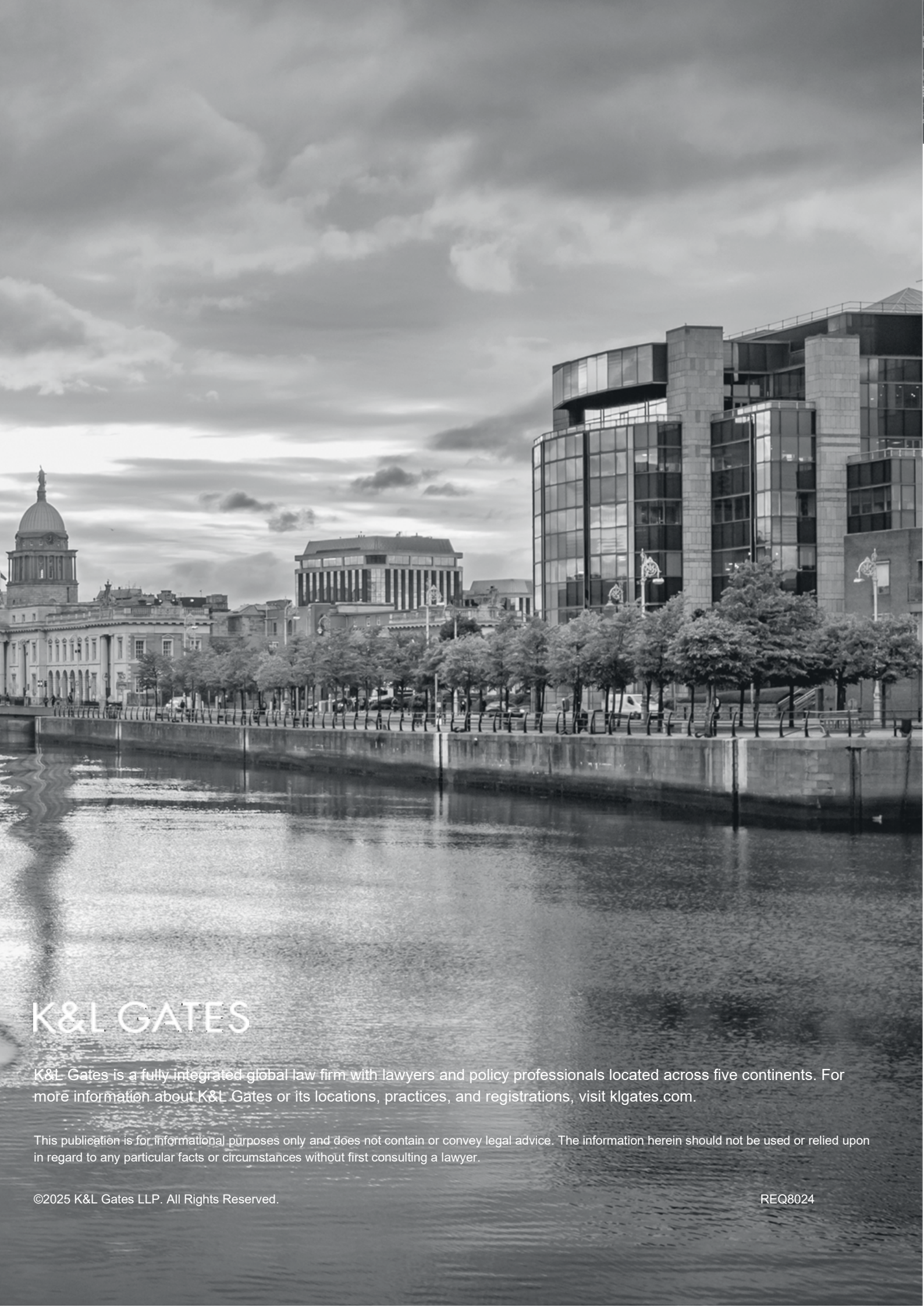
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