FOCUS ON: Irish funds

Derbhil O'Riordan, partner at Dillon Eustace, explains the opportunities that Irish fund structures hold for the Latam region

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In a world where investors are seeking more security, transparency and regulation, and as Latin American fund managers seek to broaden their distribution bases, more and more managers are looking to regulated jurisdictions as alternative domiciles of choice to the traditional offshore solutions. Increasingly, Ireland is emerging as the regulated jurisdiction of choice for Latin American fund managers, offering flexibility, expertise, international brand recognition and a favourable tax regime to the global funds industry for over 20 years.

Ireland's premium products in the regulated funds arena are Undertakings for Collective Investment in Transferable Securities (Ucits), and Qualifying Investor Funds (QIFs), two very different products, offering a wide range of onshore solutions.

Ireland has become one of the leading EU 'exporting' jurisdictions for Ucits having been pro-active in implementing the Ucits regime into domestic legislation in 1989, introducing a sensible investment funds focused fiscal regime and clear, prudential process for the authorisation and supervision of Ucits and relevant service providers. The result has been that promoters from all across the world have used, and continue to use, Ireland as a domicile of choice for Ucits products seeking to access the European market and, in many cases, further afield.

For the purposes of this article however, we will focus on the QIF solution as a regulated alternative to traditional unregulated jurisdictions.

A brief description of QIFs

QIFs are the most flexible of Irish fund structures, with few investment limits, none on borrowing but with minimum subscription requirements and appropriate expertise/understanding criteria. QIFs provide a high level of structuring flexibility as well as a fast track authorisation process. Similar to Cayman funds, QIFs are normally private placement vehicles, offered in accordance with the relevant target jurisdictions' local private placement rules however, once implemented, the Alternative Investment Fund Managers Directive (AIFMD) will afford certain passporting benefits to Irish QIFs.

QIFs are subject to a minimum subscription requirement of €100,000 per investor and investors must meet certain appropriate expertise/understanding tests. An exemption from these requirements is available to the QIF managers and others who are closely connected with the management of the QIF.

Fast-track authorisation for QIFs

The Central Bank of Ireland (Central Bank) does not require prior filing or review of fund documentation for QIFs. Instead, there is a self certification regime (certification has to be given by the QIF and by the Irish legal advisers). With certification, the fund documentation is simply negotiated between the promoter, the legal advisers and the other service providers and then executed and filed with the Central Bank. Provided that the documentation is filed by 3pm on the day prior to the date for which authorisation is sought, the QIF will be authorised on the requested date without a prior review. A 'spot check' post authorisation review may then take place.

QIF liquidity and investment restrictions

QIFs can be structured as open-ended with limited liquidity, limited liquidity or closed-ended schemes. Gates, deferred redemptions, holdbacks, in-kind redemptions and side pockets can all be facilitated within these types of funds.

QIFs are subject to very few investment restrictions in respect of direct investments as follows:

(a) when transacting over-the-counter in circumstances where collateral is being passed by the QIF outside the Irish trustee/custodian's custodial network, QIFs are generally required to deal with counterparties with a minimum credit rating of A2/P2 (or A1/P1 where the QIF's exposure to such a counterparty may exceed 40% of its net asset value).

(b) QIFs structured as investment companies must comply with the principle of 'spreading investment risk'. It is left to the discretion of the board of directors to determine actual diversification with reference to particular strategies;

(c) QIFs may invest up to 100% of assets in underlying regulated or unregulated funds but no more than 50% of net assets in a single underlying fund, investment in an underlying fund in excess of 50% of net assets will be treated as a feeder type investment;

(d) Irish funds may not grant loans though there are so many exceptions to this rule as to make the rule virtually redundant. For example, a QIF may acquire a loan, may acquire a debt security (including a promissory note or other securitised loan), may make deposits, may enter any kind of derivative, may enter into reverse repo agreements, etc; and

(e) borrowing and leverage are not subject to regulatory limit.

QIFs for multi-jurisdictional distribution

For Latin American fund managers seeking a global marketing solution, particularly involving US investors, one way of structuring this type of fund offering is to use a single Irish 'master' fund as a hub and then one or more 'feeder' funds as this can optimise the tax treatment which, for example, US tax-paying and US tax exempt investors obtain from an investment in the structure while at the same time sheltering non-US investors from US tax risks and reporting requirements. With the dual aims of (i) providing US taxable investors on the one hand and US tax exempt and non-US investors on the other hand, with an optimal fund structure, and (ii) creating a structure that is as cost and operationally efficient as possible, a hedge fund that is to be simultaneously offered inside and outside the US is generally structured as a master-feeder.

This structure may take the following form:

- an Irish single or umbrella unit trust (the 'Irish master fund') authorised by the Central Bank as a regulated hedge fund. While other types of Irish fund can also be used, an Irish unit trust can elect to 'check the box' (US Form 8832) to be treated as a partnership for US tax reporting purposes;
- an Irish single-feeder fund investment company or unit trust (the 'Irish feeder fund') authorised by the Central Bank as a regulated feeder fund. This vehicle is typically used to separate the US tax exempt and other non-US (global investors) from US taxable investors at the Irish master fund level;
- a Delaware or Cayman or other offshore feeder fund typically structured as a limited partnership or limited liability company (the 'non-Irish feeder fund'). The non-Irish feeder fund will be targeted at US taxable investors and is often optional. From a tax and regulatory perspective, US taxable investors could invest directly in the Irish master fund instead of investing indirectly through their investments in the non-Irish feeder fund;
- the Irish master fund invests directly in the underlying assets availing of Ireland's exempt domestic taxation regime for payments or transfers to the Irish and non-Irish feeders. The sole investors in the Irish master fund will be the feeders and they may invest directly in a single pool at the Irish master fund level or in segregated sub-trusts, if the master is established as an umbrella fund. The Irish master fund can also offer multiple unit/share classes or series to the feeders; and
- the Irish feeder fund and non-Irish feeder fund acquire units/shares in the Irish master fund which fluctuate in value in accordance with the performance of the assets at the Irish master fund level. The liquidity at the level of the feeder funds and the Irish master fund level can be matched.

Taxation

Irish Ucits and QIFs are not subject to any taxes on their income (profits) or gains. No stamp duty or capital duty is payable on the issue, transfer, repurchase, redemption or units/shares in an Irish fund. There are no Irish withholding taxes in respect of a distribution of payments by an Irish fund to investors or in relation to any encashment, redemption, cancellation or transfer of units/shares in respect of investors who are neither Irish resident nor ordinarily resident in Ireland.

Conclusion

Ireland's reputation as the premier domicile in Europe for the establishment of Ucits has long been recognised by Latin American fund managers, and many have taken the opportunity to distribute their product through Irish Ucits not only in Europe and Latam, but in the Asia Pacific region, the US and elsewhere.

Increasingly, however, fund managers in Latam are also looking for regulated alternatives to traditional hedge fund jurisdictions and are using the QIF as the hedge fund solution of choice. The QIF is a regulated product in a market seeking flexibility, speed to market, and global distribution, and has a proven track record with transparency and investor protection, providing an answer to the question of regulation in the alternative space.

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