



Re-Domiciling an Investment Fund to Ireland

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RE-DOMICILING AN INVESTMENT FUND TO IRELAND

Introduction

Over the course of the last 20 years, Ireland has earned a reputation as one of the most attractive jurisdictions in which to establish an investment fund, ranking amongst the most flexible and advantageous international fund domiciles due in no small part to the wide variety of funds (from traditional long only to sophisticated alternatives) which may be established under the Irish legal and regulatory system as well as Ireland's ability to react promptly to the demands of both fund promoters and investors.

One of the latest developments in Ireland's offering is the new re-domiciliation process introduced by the Companies (Miscellaneous Provisions) Act, 2009 (the "Act") which enables funds from the following jurisdictions to re-domicile to Ireland in an efficient manner:

-  The British Virgin Islands
-  The Cayman Islands
-  Jersey
-  Guernsey
-  Bermuda
-  The Isle of Man

The new regime enables re-domiciled funds to be authorised in Ireland as either UCITS or non-UCITS, principally as Qualifying Investor Funds ("QIFs"), provided that they meet the relevant criteria for the chosen fund structure.

The QIF is the most frequently used vehicle for hedge funds, FoHFs, private equity and real estate funds in Ireland due to its few investment restrictions, absence of borrowing or leverage limits, its fast track authorisation process and various liquidity options (open-ended, limited liquidity and closed-ended).

The UCITS structure is regarded as the European gold standard fund structure and once authorised in Ireland can be sold without further authorisation into the other 26 EU Member States. It is also sold in Asia (mostly Hong Kong, Japan, Korea), in Latin and South America and the Middle East. UCITS can house a variety of strategies provided liquidity, diversification and certain additional criteria are met.

Reasons for Re-Domiciling an Investment Fund to Ireland

There are many reasons why fund promoters may make the decision to re-domicile their investment fund to Ireland, including the desire to be based in a regulated jurisdiction, the desire to leverage off the availability of experienced and highly professional service providers or simply as a reaction to investor demand.

In the post-Madoff environment, there has been a significant trend for fund promoters to establish their new investment funds in highly regulated and well supervised jurisdictions such as Ireland, rather than in those which traditionally have been regarded as being less regulated.

In addition, many hedge funds and other alternative investment vehicles are setting up in an onshore jurisdiction like Ireland because of its strong regulatory environment and greater transparency, factors which address many investors demands as well as due to uncertainty around AiFMD.

As a leading European jurisdiction for sophisticated funds Ireland “ticks all of the boxes” for asset managers and other fund promoters when choosing a domicile for a sophisticated fund. In particular, Ireland’s reputation as a “domicile of choice” for investment funds may be attributed to a number of factors including:

Regulation

Ireland is a regulated jurisdiction offering both UCITS and non-UCITS products across the whole spectrum from plain vanilla long only products through to UCITS alternatives, hedge funds and FoHFs, real estate and private equity schemes. The Financial Regulator has many years of experience in authorising and regulating sophisticated investment strategies and products and has adapted and developed its regulations to keep pace with developments in the funds industry internationally.

Taxation

Ireland has a favourable tax regime for investment funds including (i) exemption from tax on the fund’s income and/or gains (ii) no withholding taxes on distributions to non-Irish resident investors and (iii) a wide (and expanding) network of double taxation treaties. Combined with an attractive SPV tax regime, alternative investment funds are increasingly using Ireland as a domicile because of the ability to access Ireland’s double tax treaties and take advantage of EU tax directives to avoid and/or minimize foreign taxes.

In line with recent tax amendments permitting investment funds not to use non-resident declarations (NRDs) to identify Irish resident investors and instead adopt appropriate equivalent measures (see our separate release “Funds – An Alternative to NRDs – Equivalent Measures”) Revenue has confirmed that funds re-domiciling to Ireland may apply

for Revenue approval to adopt Equivalent Measures (rather than operate NRDs). In respect of existing investors in the investment fund at the time of re-domiciling to Ireland, the investment undertaking may make a simple declaration within 30 days from the date investment fund re-domiciles to Ireland stating that to the best of its knowledge and belief that at the time of the re-domicile it has no Irish resident investors (other than such investors whose name and addresses are set out on the schedule to the declaration). Alternatively investment funds may be able to obtain NRDs from existing investors at the time of the re-domicile.

Legal Environment

Ireland operates under a common law legal system with a variety of suitable fund structures (corporate, trust, CCF and ILPs).

Service Providers

All of the leading fund custodians and administrators have operations in Ireland staffed by teams with in depth experience across the full range of fund products. This is demonstrated by the fact that approximately 50% of all global hedge funds are administered in Ireland.

International Status

Ireland is a member of the European Union (EU), the Organisation for Economic Co-Operation and Development (OECD) and the Financial Action Task Force (FATF).

As well as being an attractive jurisdiction for the establishment of new investment funds, Ireland now offers a relatively straightforward process for re-domiciling to Ireland an investment fund established in another jurisdiction.

Practical Considerations

It was always possible to re-domicile a non-Irish domiciled investment fund to Ireland but in many cases the process was not efficient (usually by means of an asset for share swap between the Irish vehicle and the non-Irish vehicle, following which the authorisation of the non-Irish vehicle would be revoked by its home regulator and the entity would then be liquidated).

However, new Irish legislation (passed December 2009, commenced September 2010) has introduced a very efficient system for re-domiciling non-Irish domiciled corporate funds into Ireland.

The new system enables corporate funds established and registered in the jurisdictions listed above to apply to the Register of Companies in Ireland ("CRO") to continue as a company under the laws of Ireland and to apply to the Financial Regulator to be authorised as a fund in Ireland as either non-UCITS or UCITS funds provided that they meet the relevant criteria

for the chosen fund structure.

The new system provides a number of benefits. For example, the track record of the existing fund can be maintained, no portfolio realisation will need to occur and no asset for share swap or amalgamation will be required under the new system. Investors (depending on the tax laws in their own jurisdiction) may be able to avoid a tax charge on the fund re-domiciling as investors will not have disposed of their shares in the fund upon it re-domiciling to Ireland.

It is therefore a very efficient system for fund promoters considering re-domiciling their corporate funds in Ireland.

Unit Trusts

Fund promoters seeking to re-domicile unit trust funds in Ireland will shortly also be able to benefit from a similar process to be introduced in Ireland in the coming weeks.

The Process

The re-domiciliation process requires the re-domiciling (or migrating) fund to:

- amend its memorandum and articles of association (or equivalent constitutive document) to ensure that they comply with Irish law and meet the requirements of the Financial Regulator; and
- apply to the Financial Regulator for authorisation under the relevant Irish regime, either as a UCITS or a non-UCITS.

Prior to an application being made to have the fund approved under the Irish regime, the entity which is acting as the promoter and the discretionary asset manager of the re-domiciling fund will need to obtain approval of the Financial Regulator to act as a promoter of and as discretionary asset manager to Irish funds.

The process for registering the migrating investment company in the CRO requires filing of certain documentation such as:

- a certified copy of the original certificate of incorporation (or equivalent document) and constitutive document from the original jurisdiction;
- a certified copy of the new memorandum and articles of association (or equivalent constitutive document) of the migrating company;
- statutory declarations by any one director stating, amongst other things, that the company is in compliance with the Act, is not subject to any petition to be wound-up (or any similar petition) and is solvent; and

- a schedule of any security interests created by the migrating company that are registerable in Ireland under the Irish Companies Acts.

The CRO will not register the migrating company in Ireland until it has received (in addition to the documentation outlined above) notification from the Financial Regulator that it proposes to authorise the migrating investment company to carry on business as an Irish domiciled fund.

As soon as the migrating fund is registered in the CRO, it is obliged to apply to be de-registered in the relevant non-Irish jurisdiction and it must notify the CRO and the Financial Regulator within 3 days of it being de-registered in that jurisdiction. The Financial Regulator will authorise the migrating company as an Irish domiciled fund once its registration in Ireland is effected.

Conclusion

This new initiative by the Irish Government is a significant and extremely positive development for both the Irish and international investment fund community, demonstrating Ireland's continuing ability to be able to react promptly to the demands of both fund promoters and fund investors in what is a changed environment with a greater demand for regulation, particularly regulation around the product providers and fund structures, while at the same time continuing to provide great flexibility in both investment and borrowing / leverage arrangements.

The new re-domiciliation regime is an efficient means for promoters wishing to utilise the UCITS product or the Irish QIF product (the vehicle most used for hedge funds, FoHF and less liquid/highly leveraged products and which vehicle is currently being enhanced to provide additional flexibility on eligible investors) with the new re-domiciliation opportunity making the process more straight forward and, most importantly, avoiding any necessity of having to liquidate a portfolio or engage in asset for share swap arrangements.

Should you require any additional information on structuring possibilities in Ireland, please contact any of the partners from the Dillon Eustace Asset Management and Investment Funds team. Additional, detailed information on all of the Irish fund structures is available on our website, including:

-  A Guide to Irish Qualifying Investor Funds
-  A Guide to UCITS in Ireland
-  A Guide to Hedge Funds in Ireland
-  A Guide to Regulated Real Estate Fund Products in Ireland
-  A Guide to Private Equity Funds in Ireland
-  ETFs and the UCITS Framework

and many more fund related brochures and briefings.

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