

Redomiciliation of an Investment Trust from the Cayman Islands to Ireland

DILLON □ EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

□ REDOMICILIATION OF AN INVESTMENT TRUST FROM THE CAYMAN ISLANDS TO IRELAND

On 1 October this year, Dillon Eustace successfully obtained approval from the Central Bank of Ireland (the “Central Bank”) for the first re-domiciliation of an investment trust from the Cayman Islands to Ireland. The re-domiciliation in question involved the migration to Ireland of a trust registered with the Cayman Islands Registrar of Trusts which, upon migration, was authorised as a Qualifying Investor Fund by the Central Bank pursuant to the Unit Trusts Act, 1990.

The approval was granted in light of the recent commencement of the legislation applicable to re-domiciliation of corporate entities in Ireland. While there is no specific legislation enacted in respect of the re-domiciliation of trusts, the Central Bank has now agreed the procedures to be followed in respect of such re-domiciliations.

In essence the re-domiciliation process for an investment trust, to the extent necessary and practical, mirrors that for corporate entities and involves the following:

- the trustee of the re-domiciling (or migrating) fund retiring as trustee and, subject to the terms of the original trust instrument, facilitating the appointment of a new trustee domiciled in Ireland and the change in jurisdiction and governing law applicable to the trust;
- amendment and restatement of the trust instrument to ensure that it complies with Irish law and meet the requirements of the Irish Central Bank, including restating the trust instrument so that it takes the form of a bi-lateral arrangement involving both the Irish domiciled manager and trustee;
- formal application to the Central Bank for authorisation under the relevant Irish regime either as a UCITS or a non-UCITS (subject to prior approval of the Promoter and Investment Manager of the trust being obtained from the Central Bank);
- in conjunction with the filing of the application for authorization, the Central Bank will also require evidence of the formal migration of the trust from its original domicile and evidence of its good standing and solvency prior to such migration.

- the requirements of the Central Bank in respect of the formal migration of the trust from its original country of domicile will vary depending upon the jurisdiction from which the investment trust is migrating and the nature of its authorisation or regulation in that jurisdiction. Where formal evidence of de-registration or de-authorisation cannot be obtained, the Central Bank has indicated its willingness to rely on the opinion of local counsel in this regard.
- the Central Bank will further require that the promoter of the investment trust provide it with confirmation, in the form of two separate statutory declarations, that amongst other things, the trust has capacity to re-domicile, it is not the subject of any insolvency proceedings and that it is in fact solvent.

In relation to the statutory declaration of solvency, it is important to note that this declaration must be accompanied by a statement of assets and liabilities and the promoter must confirm that, having made a full enquiry into the affairs of the trust, it has formed the opinion that the trust is able to pay its debts as they fall due. This must be accompanied by a report of an independent person (i.e. any person qualified to act as auditor to the trust) that the statement of assets and liabilities and the opinion of the promoter as to solvency are reasonable.

The procedures outlined above have not yet been formalised by the Irish Central Bank through issue of a formal guidance or notice. However, it is intended to issue such guidance shortly. In the interim, the Central Bank has indicated its willingness to consider any such application on a case by case basis and apply the procedures outlined above.

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