

Funds Re-domiciling to Ireland

Mason Hayes+Curran continues to see growing interest from fund managers in having their unregulated funds re-domiciled to Ireland. Driven by market events over the last two years, there is increased investor demand for regulated funds. Regulatory developments such as the AIFM Directive and the UCITS IV Directive have also contributed to this growing trend, while fund managers are recognising the increased distribution opportunities of regulated funds such as UCITS.

Already in a leading position as a European regulated fund jurisdiction, Ireland has moved quickly to further enhance its appeal and to facilitate the re-domiciliation of unregulated funds.

Legislative Changes

A number of important tax changes for the Irish investment funds industry were announced on 4 February 2010 in the Finance Bill 2010 (the "Finance Bill"). One of the new measures is an exemption from stamp duty in relation to fund re-organisations, reconstructions or amalgamations, to capture situations where an Irish fund, in exchange for assets transferred, issues units directly to a foreign fund, rather than to the foreign fund's unit holders. This represents a significant change that facilitates the master/feeder structures envisaged under UCITS IV but also the re-domiciling of investment funds more generally.

The new tax developments complement company law enhancements, announced in December 2009, introducing new re-domiciliation procedures for corporate funds to Ireland. On 23 December 2009, the Companies (Miscellaneous Provisions) Act 2009 was signed into Irish law and this introduced an extremely efficient process to re-domicile funds to Ireland.

In the past, re-domiciliations to Ireland were effected by establishing a new fund structure in Ireland, transferring the assets of the existing fund to the new Irish fund and ultimately winding up the "shell" of the original fund. Now, under the new law, funds can migrate directly to Ireland retaining their corporate identities, their track record (provided no significant change to investment policy or fee structure occurs) and their existing contractual arrangements.

The legislation recognises the burden posed by previous requirements for shareholder approval, where approval of the shareholders of both the existing fund and the new Irish fund was required. Under the new regime, re-domiciliation may now be approved by the shareholders of the migrating fund only, without the burden of having to convene a meeting of the shareholders of the fund in Ireland. Furthermore, a more streamlined process of document registration has been introduced, resulting in a new single-filing registration process at the Irish Companies Registration Office (CRO). It should be noted that an Irish domiciled fund must be authorised by the Irish Financial Regulator, a process which will occur simultaneously with registration at the CRO.

Advantages

The new regime has many advantages, including the following: -

- it introduces a legal framework to enhance the efficiency of the process to re-domicile unregulated funds to Ireland, a jurisdiction within the EU, the OECD, with a common law legal infrastructure and with the highest degree of expertise and experience in servicing sophisticated fund strategies;
- there is no tax inefficient transfer of assets between funds;



- there is potentially no disposal of the interests of unit holders for tax purposes;
- the fund retains its corporate identity, its existing contractual arrangements, its track record and its listing history;
- a previous requirement for a general meeting of the shareholders of the migrating fund in Ireland no longer applies;
- these efficiencies will reduce costs by eliminating or simplifying operational issues such as changes to documentation, withholding tax clearances etc.

Conclusion

Already widely recognised as a jurisdiction of choice for regulated fund products for global distribution, Ireland's implementation of these new measures further enhances its reputation as a pro-enterprise, competitive fund domicile. The legislative changes came about due to the continued partnership approach between the Irish fund industry and the Government agencies responsible for framing the regulatory environment in which the industry operates. As a result, Ireland continues to demonstrate its adaptability to the needs of this dynamic industry, providing solutions for fund managers operating in the global market.

Attribute to Fionán Breathnach, Partner, Mason Hayes+Curran.

Fionán is head of Mason Hayes+Curran's investment funds and regulation unit and is a partner in the financial services department of Mason Hayes+Curran. For more information, please contact Fionán at fbreathnach@mhc.ie or + 353 1 614 5000. The content of this article is provided for information purposes only and does not constitute legal or other advice. Mason Hayes+Curran (www.mhc.ie) is a leading business law firm with offices in Dublin, London and New York.

© Copyright Mason Hayes+Curran 2010. All rights reserved.