



Irish Central Bank issues guidance on redomiciliations

The Central Bank of Ireland has issued new guidance by letter dated 17 December 2010 (the “Guidance Letter”) in relation to the re-domiciliation to Ireland of investment funds structured as both corporate entities and unit trusts.

Background

New company law enhancements contained in the Companies (Miscellaneous Provisions) Act 2009 (the “Relevant Legislation”) introduced a new straightforward procedure to re-domicile corporate funds to Ireland. Further to this legislation on 6 September 2010, the Irish Minister for Enterprise, Trade and Innovation approved Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey as jurisdictions from which corporate funds may redomicile to Ireland.

Prior to this legislation, due to the absence of specific re-domiciliation provisions under Irish company law, a re-domiciliation to Ireland would typically be 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. While this did enable continuity, the Irish entity was effectively a new structure.

Under the current regime, a fund can migrate directly to Ireland retaining its corporate identity, track record (provided no significant change to investment policy or fee structure occurs) and existing contractual arrangements.

Guidance

The Guidance Letter clarifies that an application for a non-Irish corporate fund seeking to re-domicile under the Relevant Legislation will be treated as a standard new fund application so the relevant authorisation procedure will apply as normal and the relevant parties to the fund must be approved in the usual manner. The Guidance Letter clarifies that the 24 hour approval process available for QIFs can be availed of by funds redomiciling, subject to the application meeting the appropriate requirements.

Unit Trusts

As the Relevant Legislation does not address unit trusts, the Guidance Letter clarifies that similar provisions to those applicable to corporate entities will apply to unit trusts but because there is no registration with the Companies

Registration Office involved in establishing a unit trust additional documentation will be required to be provided to the Central Bank as part of the redomiciliation process. Specifically, a certified copy of the trust deed, a declaration of solvency from the promoter or trustee, a certified copy of the local registration certificate and confirmation from the local regulator regarding the regulatory status of the unit trust prior to the move (or a letter from a local legal adviser confirming that no such registration certificate exists and that there is no reason why the unit trust could not redomicile). A version of the statutory declaration required by companies pursuant to the Relevant Legislation, will also be required. The Guidance Letter specifies the specific documents which will be required for unit trusts redomiciling from Bermuda and the Cayman Islands and provides that further documents may be added to this list in respect of unit trusts redomiciling from the other prescribed jurisdictions.

Derogation

In the case of newly authorised QIFs, investors are required to certify that they meet the necessary criteria as specified in the Central Bank's Non-UCITS Notices. However, the Central Bank has clarified in the Guidance Letter that it acknowledges that it would not be practical or reasonable to require this from the investors of a redomiciling fund. Instead, it will accept written confirmation in this regard to be provided in relation to existing investors by the directors of a redomiciling corporate fund or the manager or promoter of a unit trust.

Advantages of the Redomiciliation System

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

- it provides a clear legal framework to enhance the efficiency of the process to re-domicile unregulated funds to Ireland;
- it provides for the continuation of foreign investment companies in Ireland and allowing the existing corporate identity of the migrating company to be retained;
- there is no tax inefficient transfer of assets between funds; and
- the fund retains its existing contractual arrangements, its track record and its listing history.

Summary

The Guidance Letter clarifies a range of key points in relation to the practical requirements of the Central Bank for both corporate entities and unit trusts wishing to redomicile to Ireland. This should further facilitate the efficient redomiciliation of offshore funds from each of the designated jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey to Ireland and further boost Ireland's role as a global fund domicile.

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