A&L Goodbody

Proposed New Irish Corporate Fund Structure

New legislation is being prepared which will provide for a new bespoke corporate vehicle for Irish collective investment schemes. It will loosely resemble a UK OEIC (without the need for an ACD), or a SICAV, or an open-ended mutual fund in the United States. The new corporate vehicle may be open or closed- ended and will be able to be authorised by the Central Bank of Ireland as a UCITS or as a non-UCITS fund. It will be able to be structured as an umbrella vehicle and will be able to offer multiple share classes in each sub-fund. It will, we expect, be treated for regulatory purposes just like any other Irish fund structure.

Tax advantages

While Irish investment funds authorised as unit trusts, CCFs and investment limited partnerships can be treated as "look throughs" for US tax purposes, Irish public limited companies (plcs) are currently viewed as corporations and not "look throughs" for US tax purposes and are therefore potentially subject to some adverse tax consequences for US taxable investors

One of the primary reasons for the introduction of this new fund vehicle has been to create a corporate fund entity in Ireland that is able to "check the box" for US tax purposes. The benefits of having such US tax status is that US resident investors can treat the fund as a partnership for US tax purposes and it is therefore "look through". Broadly, the ability to treat an investment in a foreign fund as an investment in a partnership enables the onerous US "PFIC" rules to be avoided.

Streamlined administrative burden

Irish corporate funds are currently structured as public limited companies (plcs). While the plc structure has served us well, some existing requirements under Irish company law serve no real purpose where investment vehicles are concerned. The new vehicle will not be subject to these requirements and this will result in a reduced administrative burden and reduced costs.

Timing

The proposed legislation is, we hope, likely to be enacted by the end of 2012, or early 2013 and ahead of the implementation deadline for the Alternative Investment Fund Managers Directive (AIFMD) in July 2013.

Conversion of existing corporate funds

While plcs continue to be an extremely effective and popular structure, the creation of a structure which is designed specifically for investment funds and which is not subject to rules which were designed for other forms of company will give added flexibility. Plcs will continue to be available to promoters who wish to use them and conversion to the new structure will be an option for existing plcs which will be provided for in the new legislation.

Migrations

This new vehicle is expected to be of particular interest to non- Irish investment funds established as corporate vehicles that wish to migrate to Ireland without jeopardising existing US tax structuring for US investors.

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