

## Fund re-domiciliations to Ireland

The Investment Funds Unit at A&L Goodbody re-domiciled the first corporate investment fund into Ireland. The fund migrated from Bermuda to Ireland on 8 December 2010. Since then A&L Goodbody has re-domiciled further investment companies and several unit trusts to Ireland.

### What does fund re-domiciliation mean?

It means moving an existing investment fund from one domicile to another e.g. moving a Jersey or Cayman domiciled fund to Ireland. It is also referred to as “migrating” or “continuing” a fund into another jurisdiction.

### Why consider re-domiciling a fund?

One reason to re-domicile a fund is the growing demand from investors for greater regulation, the so-called “flight to quality”. Hedge funds have historically been domiciled in “offshore” jurisdictions which have typically operated a light touch regulating regime. The Alternative Investment Fund Managers Directive (AIFMD) has also prompted managers to look to more regulated jurisdictions. The option to re-domicile as a UCITS is available in Ireland, providing a UCITS passport and the potential for new distribution channels and raising new capital. A pan-European passport is available under AIFMD, also increasing distribution opportunities. Re-domiciliation is a more efficient alternative to undertaking a cross-border merger as re-domiciliation does not involve setting up a new fund, selling or transferring assets, shares or investors and consequently should eliminate or significantly reduce stamp duty and other taxes.

### Why re-domicile to Ireland?

Ireland is widely regarded as the jurisdiction of choice for asset managers seeking to establish regulated fund products for global distribution. The Irish re-domiciliation procedure aims to maximise efficiency and minimise any regulatory, tax or other considerations for the fund. Advantages in Ireland include:

- a well-established and respected legal and regulatory framework and a co-operative regulator in the Central Bank of Ireland.
- broad experience and expertise in alternative funds – many hedge fund managers are looking to run their strategies within a UCITS product.
- a strong and pro-active funds industry representative body in the Irish Funds Industry Association.
- a skilled specialist workforce of administration and custody providers, legal and tax advisors, auditors and consultants.
- a favourable tax regime for Irish domiciled funds, and an extensive network of double tax treaties currently with 68 countries.
- a broad product range of fund categories and legal structures in Ireland which provides flexibility in investment options for the re-domiciling fund.

### Where can a fund re-domicile from?

Funds can re-domicile to Ireland from the Cayman Islands, BVI, Bermuda, Isle of Man, Jersey and Guernsey.

### How does a fund re-domicile?

There are documented regulatory procedures in place for re-domiciling both investment companies and trusts. The company migration regime is based on Irish legislation and the trust regime operates with many of the same requirements. In the case of an investment company, the legal process involves making an application to the Irish Companies Registration Office (CRO) for the company to continue in existence and be registered as an Irish company. There is a separate regulatory process, which runs alongside the legal one, for both investment companies and trusts which involves an application to the Central Bank of Ireland for authorisation of the fund under the chosen Irish fund category. The CRO and Central Bank of Ireland will register and authorise the investment company on the same day.

### Will investor consent be required?

There is no requirement from an Irish perspective to obtain investor consent. This will depend on the requirements of the original domicile and the existing terms of each fund seeking to re-domicile. Typically it is advisable to at least communicate the intention to re-domicile to investors prior to the re-domiciliation.

### Will the fund have to be structured or operate in a different way?

The new process for migrating investment companies ensures that there is no change in the legal entity so investors continue to hold shares in the same entity. The fund can continue its track record.

Ireland has several regulatory categories of fund and legal structures available so the migrating fund will be able to select the one which best fits its investment strategy and operation. In general, fees charged will not be required to change. The registered office will move to an Irish address, two Irish resident directors will need to be appointed to investment companies and a unit trust will need an Irish management company. An Irish fund needs a

promoter acceptable to the Central Bank (although this process is under review for Qualifying Investor Funds (QIFs)), an Irish custodian, administrator and auditor. The investment manager of an Irish fund should be regulated in the provision of asset management services in its home jurisdiction. The fund's documentation (such as the offering document, constitutional document, contracts with service providers) will need to be reviewed and are likely to need updating to comply with the Central Bank of Ireland's requirements. If re-domiciling as a UCITS, the fund will need to comply with UCITS requirements, including preparing a UCITS business plan and risk management process.

### What happens in the outgoing jurisdiction?

The migrating fund will need to satisfy all local requirements in its original domicile prior to re-domiciling. Ultimately, it must de-register from the original domicile once it has been authorised in Ireland. Prior notice of re-domiciliation must be served on the creditors of the fund.

### Are there any tax implications?

No Irish tax arises on such a re-domiciliation. Re-domiciliation should not constitute a taxable event for the re-domiciled fund and there should be no adverse tax implications for investors as they will continue to hold the same shares in the same fund. Investors should, as usual, be advised to seek their own tax advice in their country of residence. Once re-domiciled there is no tax liability on an Irish fund's income or gains and no withholding taxes on dividend or redemption payments to non-Irish investors.

### Can US taxable investors be accommodated?

If a US investor needs the fund entity to be able to "check the box" then currently an Irish corporate fund cannot be used but it is expected that a new corporate entity that can check the box will be available shortly (an Irish "SICAV"). An Irish unit trust can check the box so re-domiciliation of funds constituted as trust can occur currently, and corporate funds shortly, retaining the relevant US characteristics. There is no obstacle to having the typical feeder fund structure with separate vehicles for US taxable/non taxable investors.

### What are the cost implications?

There are varying ways to allocate costs associated with re-domiciliation. It should be possible to charge the costs associated with the migration to the fund, particularly if the move is driven by investor interests, provided there is nothing prohibiting this in the fund's offering or constitutional document. The fee for registering an investment company with the CRO is €445. There is no registration fee with the Central Bank of Ireland. It imposes an annual industry levy. The current annual fee is €2000 per fund and umbrella funds pay an additional annual fee of €450 per sub-fund on the first 5 sub-funds.

### How long will it take?

The process with the Central Bank of Ireland should take no longer than a new Irish fund application. For UCITS funds, a guide would be 6-12 weeks for the Central Bank of Ireland to review and approve all fund documentation. For an Irish Qualifying Investor Fund, the Central Bank of Ireland does not review the documentation and approval is granted within 24 hours of making a completed submission. For investment companies, we recommend that the CRO is provided with the application four weeks in advance of the migration date.

### How A&L Goodbody can help you

The Investment Funds Unit in A&L Goodbody has extensive experience in re-domiciling investment funds to Ireland. We can work with you from the start of the project right up to the date of registration in Ireland to assess the considerations when migrating funds from the Cayman Islands, BVI, Bermuda, Isle of Man, Jersey and Guernsey. We will guide and take you through the Irish legal and regulatory process and share with you our experience in dealing with the practical and operational issues that arise along the way.

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