

Re-domiciling to Ireland as an ICAV

Introduction

The Irish Collective Asset-management Vehicles Act 2015 (the **Act**) provides for the re-domiciliation of non-Irish corporate funds into Ireland as ICAVs. The Act states that a migrating body may apply to the Central Bank to be registered as an ICAV by way of continuation. It is a single process to migrate to Ireland and simultaneously convert to ICAV status. The Act's requirements are very similar to the existing company law process for fund re-domiciliation, with the main difference being that the application for conversion is made solely to the Central Bank and not to the Irish Registrar of Companies. Existing offshore funds seeking to re-domicile to Ireland are permitted to do so if the legislation of their original territory allows outward and inward re-domiciliation. The current list of relevant eligible jurisdictions includes the Cayman Islands, the British Virgin Islands and Jersey. The fund re-registers by way of continuation, such that the investment corporate continues to operate as if it had always been registered in Ireland as an ICAV.

Advantages

The advantages of re-domiciliation as an ICAV include:

1. Under Irish law, the migrating company is not treated as a new legal entity, rather the existing corporate identity is retained;
2. As the fund is re-registered by way of continuation the need to create a new fund is eliminated. This in turn should resolve any tax issues which may arise where moving assets between funds. In addition, given that there is no change in legal identity, the migration should not constitute a taxable event for investors;
3. The re-domiciliation procedure does not affect existing contracts to which the migrating company is a party, ensuring continuity of contractual arrangements;
4. The re-domiciliation procedure does not require a general meeting of shareholders of the ICAV in Ireland (though may require a general meeting of shareholders in the home jurisdiction of the migrating company); and
5. The migrating company's performance track record will be preserved through the process of continuation.

Procedure

The procedure for re-domiciliation as an ICAV includes the following steps:

1. Convene a shareholder meeting in the home jurisdiction of the migrating company to discuss the formal matters concerning the re-domiciliation;
2. Amend the constitutional document of the migrating company to ensure it complies with Irish law and meets the requirements of the Central Bank;
3. Draft the proposed resolution to amend and adopt the revised constitutional document so as to be conditional upon receipt of authorisation of the ICAV from the Central Bank;
4. A director must make a statutory declaration confirming that

the constitution of the migrating company permits conversion and that all necessary consents for conversion to an ICAV have been obtained;

5. A director must make a declaration of solvency of the migrating company, accompanied by a report of an independent auditor;
6. An application is made to the Central Bank to be registered as an ICAV in Ireland by way of continuation (Application Form AR3). This application should include the instrument of incorporation and constitution of the migrating company, as well as details of the registered office, directors and secretary of the migrating company and a schedule of security interests created by the migrating company;
7. A solicitor engaged by the migrating company, or a director, must make a statutory declaration that the migrating company has complied with all of the requirements of the registration procedure;
8. The Central Bank will publish a notice of the conversion to an ICAV in the Irish State Gazette (*Iris Oifigiúil*) and issue a certificate of registration as an ICAV to the company (whereby the migrating company is deemed to be an ICAV);
9. Upon registration of the migrating company as an ICAV, the Central Bank will authorise the migrating company to carry on business in Ireland; and
10. Finally, the migrating company will be required to apply to be de-registered as a company in its home domicile and to notify the Central Bank once this has taken place.

Conclusion

The migration process does not operate to create a new legal entity or to prejudice or affect the identity or continuity of the migrating body as previously established and registered under the laws of the relevant jurisdiction. Furthermore, it does not affect any contract made, resolution passed or any other act or thing done in relation to the migrating body or affect the rights, authorities, functions and liabilities or obligations of the migrating body or any other person. Instead, the Act provides a single, streamlined process for collective investment undertakings to re-domicile to Ireland as an ICAV by way of continuation. The process of continuation ensures that collective investment undertakings re-domiciling to Ireland continue to operate as if they had always been registered in Ireland as an ICAV.

How A&L Goodbody can help you

The Asset Management and Investment Funds group in A&L Goodbody has been closely involved in drafting the ICAV legislation and works with a number of US law firms to advise on structures that may be distributed to US investors. We can guide you through the Irish legal and regulatory process and share with you our experience in dealing with practical and operational issues that arise along the way.

KEY CONTACTS



Brian McDermott
*Partner and Head of Asset
Management & Investment Funds*
+353 1 649 2307
bmcdermott@algoodbody.com



Michael Barr
Partner
+353 1 649 2327
mbarr@algoodbody.com



Stephen Carson
Partner
+44 20 7382 0820
scarson@algoodbody.com



Mary McKenna
Partner
+353 1 649 2344
mmckenna@algoodbody.com



Nollaig Greene
Knowledge Lawyer
+353 1 649 2359
ngreene@algoodbody.com

The contents of this note are necessarily expressed in broad terms and limited to general information rather than detailed analyses or legal advice. Specialist professional advice should always be obtained to address legal and other issues arising in specific contexts.

© A&L Goodbody