



Partnership

ARTHUR COX

E X P E C T E X C E L L E N C E

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## Asset Management and Investment Funds Briefing

# Ireland's response to demand from investors to move onshore

On 4 December 2009 proposed new legislation was tabled before the Irish Parliament which provides for investment funds established outside of Ireland to move to Ireland and become subject to Ireland's investment funds regulatory regime. These proposed amendments illustrate the Irish government's support of the Irish funds industry by seeking to address the tax difficulties faced in the past by funds that chose to move their base. The provisions, contained in the Companies (Miscellaneous Provisions) Bill 2009, provide a real opportunity for funds established outside of Ireland to move to a regulated jurisdiction using a very straightforward filing process. This note describes the implications of the proposed legislation which is expected to become law in the next few weeks.

Historically, funds have moved to Ireland through a scheme of arrangement involving an in specie subscription by the offshore fund to the Irish fund and the issue of units by the Irish fund to the investors in the offshore fund. The difficulty with this process is that it may cause a taxable event for some investors depending on the capital gains tax laws in the offshore fund's home jurisdiction. In order to avoid triggering a capital gains tax issue for investors, the proposed new legislation will enable a fund to move from an offshore jurisdiction to Ireland by changing its seat or place of domicile to Ireland, but significantly the investors will remain shareholders in the same legal entity.

### Why are funds moving?

There has been a significant change in sentiment towards offshore jurisdictions as investors have become more conscious of the importance of the protections afforded by establishing funds in a regulated jurisdiction. The liquidity crisis focused investors' attention on the need for concentration, borrowing and counterparty risks to be

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addressed in fund documentation. Investors are also aware of the importance of having independent valuations and custody arrangements for funds, as well as regulation protecting shareholders' rights. In addition, there is recognition that UCITS has become a global brand for regulated product.

### Ireland as a domicile

Ireland is a leading regulated regime in which to establish fund structures. It requires independent custody and administration arrangements for all its funds. Many asset managers already have funds which are either domiciled in Ireland and/or listed on the Irish Stock Exchange and therefore Ireland is a natural choice for these managers seeking to re-domicile products in one jurisdiction.

### The process

A fund which re-domiciles to Ireland under the proposed legislation will avail of the existing Irish regulatory regime for investment funds. The process by which the move is achieved for corporate funds is straightforward. It involves an application being made to the Registrar of Companies in Ireland accompanied by a statutory declaration in a prescribed form containing certain confirmations. The declaration must confirm that the company is solvent and that no actions of any kind to appoint a liquidator have been taken or resolutions to wind up the company have been passed. The declaration must confirm that the offshore fund has served notice of the proposed re-domiciliation on its creditors in advance and that any consent or approval to the proposed move has been obtained. The application must also be accompanied by a

schedule of any charges and security interests granted by the fund that would have been registerable in Ireland had the fund been created as an Irish company. Each application must also be accompanied by a statutory declaration by a solicitor or by a director of the offshore fund confirming that all of these requirements have been met. Once these documents have been filed with the Registrar of Companies in Ireland the fund will be conditionally registered and this conditional registration will become unconditional automatically upon the authorisation of the fund by the Financial Regulator which will happen on the same day.

It is likely that most of the offshore funds availing of this process will be established either as UCITS funds or as qualifying investor funds in Ireland and the Financial Regulator will work to ensure authorisation of these funds is obtained at the same time as the registration occurs. The effect of the registration will be such that the fund will not be deemed to be a new legal entity but a continuation of the existing offshore fund albeit in a new jurisdiction thereby avoiding the possible crystallisation of tax charges that may have arisen under the scheme of arrangement process.

### Conclusion

The proposed legislation illustrates the commitment of the Irish government to the Irish funds industry and it is expected that many asset managers will avail of these provisions in order to redomicile their funds to take advantage of Ireland's favourable tax regime for investment funds. Arthur Cox has worked closely with the industry in developing these proposals and the firm's partners are available to discuss this latest development.

## Key Contacts

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