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Ireland: Launch Point for European Fundraising Success

US managers of private asset funds are attracted to Ireland as a fund domicile for its uniquely attractive combination of service provider infrastructure, common law, world class fund structures and a competitive tax environment. The country's position is currently becoming even stronger, as it modernizes fund vehicles and benefits from UK managers establishing a presence in the wake of Brexit. Here we've summarized the key takeaways from our webinar held in December.

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A best-in-class, growth domicile

Ireland is unique in Europe for having many similarities to the US as well as being a committed member of the EU. That means investment managers can access investors across the EU using a marketing passport under the Alternative Investment Fund Managers Directive (AIFMD). It speaks the same language as US managers, has a similar culture and has a common law legal system.

With more than €3 trillion in funds based in Ireland, there is a substantial infrastructure of experienced service providers. They bring a lot of value to managers entering the European market for the first time. Importantly, Ireland has a strong reputation in the global funds market. It's known for a clear and practical legal and regulatory framework, as well as the government's support for the fund industry.

The Irish government is committed to becoming a top global competitor, ensuring the regime for private equity-type strategies is best-in-class. It has recently introduced an improved Investment Limited Partnership (ILP) structure, while the local regulator—the Central Bank of Ireland— has announced its consideration of other enhancements to fund vehicles for private asset funds. This is expected to lead to changes in the treatment of carried interest and management fees, excuse and exclude provisions, and investor tranching This development follows the Central Bank of Ireland signaling its intention to permit depositaries specializing in private asset funds to operate in Ireland.

"We have seen such strong desire to establish in Ireland not just from the US but also the UK that these changes are really important in terms of removing the hoops to jump through," says Alter Domus's James McEvoy. "These developments lay solid ground for a real growth market."

What are the structuring options?

There are three typical categories of investment vehicles in Ireland– firstly, funds regulated by the Central Bank of Ireland and AIFMD-compliant; secondly, unregulated funds that are AIFMD-compliant; thirdly, funds that are neither regulated nor AIFMD-compliant.

A common type of regulated fund is the Irish Collective Asset Management Vehicle (ICAV). Established in 2015, this is a corporate vehicle with a board of directors that can appoint an Alternative Investment Fund Manager (AIFM). It has Irish service providers – a depositary and an administrator – and often a US or UK portfolio manager appointed as a delegate of the AIFM. This can be set up as an umbrella/series structure, with the option for different sub-funds.

The ILP is another regulated fund which is positioned to grow. In existence since 1994, its modernization was approved by the Irish Parliament in late 2020, making the ILP available as an umbrella/series structure. It is a typical partnership structure with a general partner (GP) that is generally expected to appoint an external AIFM, given the general partner's unlimited liability.

Turning to unregulated structures that are AIFMD-compliant, there is a Limited Partnership (LP) established pursuant to the Limited Partnerships Act 1907. It cannot be a series structure but, being unregulated, is not subject to the Central Bank of Ireland's AIF Rulebook

Thirdly, the unregulated Section 110 Company is not AIFMD-compliant. Rather than a collective investment fund, it is a special purpose vehicle, funded by debt through profit participating notes or other debt instruments. "It is a very popular structure and a great securitization vehicle as well," notes Dechert's Lindsay Trapp. "So we certainly see folks that are interested in this; it's not AFMD compliant but you can do private placements throughout Europe."

Tax competitiveness

Ireland's fund vehicles are highly competitive from a tax perspective. For instance, the ICAV is exempt from tax on income and gains. Additionally, there is no net asset tax at the fund level. That means it's possible to repatriate profits from the ICAV without exit tax on distributions or redemptions to non-Irish investors.

Ireland has more than 70 tax treaties. The important US treaty has distinct advantages for fundraising, as it defines the Irish ICAV structure, uniquely, as a resident. That confers benefits to both US and non-US investors that may not have a treaty in their own right. As long as no more than 50% of investors are from outside the US, the entire structure retains the tax treaty benefits. "This really allows you to equal the playing field for investors in terms of offering one structure versus separate vehicles for your on and offshore investors," asserts Monroe Capital's Karina Stahl.

Turning to Limited Partnerships, they are viewed as transparent from a tax perspective, which means that the tax treatment depends on what's above and below it. "Obviously for investors where you hold underlying assets directly this can be really beneficial, because in essence you can access the treaty between the investor country and the underlying assets," explains PwC's Marie Coady.

Finally, the Section 110 Company is taxable at a rate of 25%, but when structured correctly the profit participating interest payments are deductible with largely neutral impact. And, it's possible to exit the Section 110 on a tax-free basis.

A US manager's experience

Monroe Capital, an asset manager focused on US middle-market debt investing, first domiciled a fund in Ireland in 2015 as it started to raise capital in Europe and Asia, selecting an ICAV. After using a US Delaware LP, it faced a steep learning curve. Karina Stahl advises other managers: "It's going to look and feel different to being a GP in a Delaware or even a Cayman structure. And so it's really important that you've got a good dedicated team in-house that's going to learn and get comfortable with the new environment that you're operating in. And, even more importantly, you should ensure that you are very thoughtful about the selection of service providers."

She believes it's essential for US managers to be meticulous when selecting the most appropriate structure for their specific needs, explaining that the corporate ICAV structure does not work in entirely the same way as a Delaware limited partnership structure.

What difference does Brexit make?

A lot of UK managers based in London have set up AIFMs in Ireland so that they can distribute within the EU. "We've seen over 60 AIFM authorizations by the central bank in the last 18 months for firms who have decided to move from the UK," says Marie Coady. "The competitiveness of Ireland from a corporate tax perspective is also a factor. Ireland is a changed location as a result of Brexit."

Consequently, the Central Bank of Ireland is rigorously examining whether AIFMs have "substance", testing not just UK managers but also those from elsewhere. That may lead to managers appointing more third-party AIFMs. "Looking at the AIFM piece, we think that the third-party AIFM is a model that will grow and allow greater focus of managers on their core business," says James McEvoy.

KEY TAKEAWAYS

US managers setting up fund vehicles in Ireland can benefit from a range of suitable fund structures and a US tax treaty with advantages for fund raising. But there are more regulatory hurdles to jump through than when setting up and operating a US LP. As Europe's fundraising environment changes in a post-Brexit world, regulators are raising the bar for what constitutes "substance", causing some managers to appoint third-party AIFMs.

GET IN TOUCH

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