Legal and Regulatory Update – Brazil

Brazil and Ireland are AIFMD Ready

The Alternative Investment Fund Managers Directive ("AIFMD") will come into force in July of this year and introduces a new passport system for the marketing of alternative investment funds ("AIF") in the European Union. AIFMD offers a number of opportunities for Brazilian asset managers in relation to the European investment funds market.

In an important step towards ensuring that Ireland is one of the first countries to implement the AIFMD, the Central Bank of Ireland (the "Central Bank") has issued an updated version of its AIF Handbook, which provides industry with a clear description of the regime which will apply to AIFs in Ireland as well as making a number of significant enhancements to the Irish AIF product.

The Central Bank is working towards having authorisation processes and procedures in place well in advance of the July 2013 implementation deadline so that applications for authorisation under the AIFMD can be received and processed prior to that date. It is intended that applications may be submitted by the end of the first quarter 2013, and therefore Irish authorised alternative investment fund managers ("AIFM") will be in a position to avail of the marketing passport offered by the AIFMD at the earliest possible date ie, 22 July 2013.

In another positive development for Brazilian asset managers who wish to establish AIFs, the European Securities and Markets Authority ("ESMA") has announced that it has approved the co-operation arrangements between the Brazilian Comissão de Valores Mobiliários ("CVM") and EU securities regulators for the supervision of AIFs. These co-operation arrangements are required under the AIFMD in order for a Brazilian asset manager to act as investment manager to an Irish AIF. Under the new regime, an Irish self-managed AIF may apply to the Central Bank for authorisation as the AIFM, and then delegate investment management functions to a Brazilian asset manager, subject to the conditions set out in the AIFMD. The Irish self-managed AIF will then be in a position to avail of the pan-European marketing passport.

These developments mean that both Ireland and Brazil are well-positioned in the lead up to the implementation of the AIFMD in July 2013.

In a further step to strengthening the relationship between Ireland as a funds domicile and Brazilian asset managers, the Irish Funds Industry Association ("IFIA"), in partnership with IDA Ireland, the Irish Government’s inward investment agency, has now opened a representative office in São Paulo. This office is the eleventh which the IFIA has opened globally with the IDA in key jurisdictions.

This expansion of the IFIA’s global footprint is taking place alongside the continued growth of Ireland as the European domicile of choice for investment fund managers and investors. Figures from the Central Bank in October 2012 reported that the assets of Irish domiciled investment funds had reached €1,206 billion, up 60% from the end of 2009. The growth figures for qualifying investor funds...
(the existing Irish alternative investment fund product) suggest that alternative managers are turning to Irish funds in preparation for the transposition of the AIFMD into national law. In October 2012, figures from the Central Bank showed that the number of qualifying investor funds was at an all-time high of 1,622 with assets also reaching a peak of €201 billion, double the figure as at April 2009 when the AIFMD was first published.

Ireland is already the number one alternative investment centre in the world administering approximately 40% of the world's alternative investments and close to 70% of EU alternative funds.

On the UCITS side, Ireland experienced the highest inflows of UCITS of all fund domiciles in 2011, attracting €62 billion – almost €50 billion more than the next most successful domicile. This trend continued into 2012 with European net flow figures to Q3 2012 showing Ireland as number one for net inflows of UCITS, recording net sales of €63 billion, which exceeded the remainder of European jurisdictions combined.

If there are any particular aspects of the AIFMD or Ireland as a funds domicile which you would like clarification or advice on, please contact Liam Collins or your usual Asset Management and Investment Funds Group contact or any of the contacts listed in this email.

For our full suite of AIFMD Factsheets, including our Factsheet on EU AIF appointing non-EU Managers, please visit our dedicated AIFMD web page.

The material is provided for general information purposes only and does not purport to cover every aspect of the themes and subject matter discussed, nor is it intended to provide, and does not constitute, legal or any other advice on any particular matter.

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