

Newsletter
Spring 2008

DILLON  EUSTACE

DUBLIN CORK BOSTON TOKYO

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FINANCIAL SERVICES UPDATE

Directive on Eligible Assets and Consultation Paper 31

S.I. 832 of 2007, the EC (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2007 (the "Regulations"), was signed into law on 19 December 2007 to transpose the EC Commission Directive 2007/16/EC of 19 March 2007 which amended Council Directive 85/611/EEC. The Regulations concern eligible assets for UCITS and follow on from the Committee of European Securities Regulators ("CESR") guidelines concerning eligible assets for investment by UCITS and additional guidelines on the classification of hedge fund indices as financial indices which were issued earlier in the year.

Closed-ended funds become transferable securities provided that they are subject to certain corporate government mechanisms, their asset management activities are carried out by an entity subject to national regulation for the purpose of investor protection and they fulfil the eligibility criteria applicable to transferable securities.

Financial indices, whether or not composed of eligible assets, can be regarded as eligible assets provided that they are sufficiently diversified, they represent an adequate benchmark for the market to which they refer and they are published in an appropriate

manner. As regards hedge fund indices, such indices must be subject to additional requirements regarding publication of their selection and construction methodologies as set out in the level three guidelines issued by CESR in July, 2007.

The Financial Regulator has issued Consultation Paper 31 which highlights amendments to the UCITS Notices and related Guidance Notes to reflect these new Regulations and CESR's guidelines. The amendments to the UCITS Regulations came into effect on 19 December 2007. However, the Regulations provide that UCITS authorised by the Financial Regulator before this date have until 23 July 2008 to comply with the amended Regulations. UCITS authorised from 19 December 2007 must comply with the new requirements from the date of authorisation.

Some of the key proposed amendments to the UCITS Notices and Guidance Notes, are as follows:

Guidance Note 3/03 UCITS Financial Derivatives Instruments

- Guidance Note 3/03 has been previously amended to include eligible assets requirements. Additional amendments are proposed to:

- clarify a number of areas including the treatment of fully funded swaps in the context of global and counterparty risk exposure; and

- highlight the requirement to measure and monitor all exposures relating to the use of FDI on a daily basis.

Guidance Note -/08 Valuation of Assets of Money Market Funds

- A new Guidance Note is proposed to provide for the valuation of assets of money market funds. The Financial Regulator permits money market funds to provide for the use of an amortised cost valuation methodology. The principles applied to this valuation process were previously set down in Guidance Note 1/00 (Valuation of assets of collective investment schemes). These principles have now been moved from that Guidance Note to this new document.

UCITS 12 - Use of repurchase Reverse repurchase Agreements and Stock Lending for the purpose of efficient portfolio management.

This Notice has been previously amended to include certain CESR Guidelines and additional amendments are proposed to:

- broaden the types of eligible collateral that can be received by a UCITS under a stock lending /repurchase agreement;
- permit that up to 20% of cash collateral received may be invested in 30 day deposits;
- replace the existing condition, which requires that re-investment of certain cash collateral be diversified in terms of total

invested cash with a requirement to diversify invested cash in accordance with the CESR Guidelines. This states that “techniques and instruments relating to transferable securities and money market instruments can not result in a change of the fund’s declared investment objective or add substantial supplementary risks in comparison to the concerned fund’s general risk policy as described in its applicable sales documents”; and

- replace reference to Central Securities Depositories Systems in paragraph 11 with “International” Central Securities Depositories Systems. Paragraph 11 permits UCITS to engage in stock lending within Central Securities Depositories Systems such as Euroclear and Clearstream

UCITS 13 Umbrella UCITS

- A technical amendment has been made to Notice UCITS 13 to clarify that where sub-funds of umbrella funds invest in sister sub-funds, the investment is subject to the restriction set out in paragraph 3 of Notice UCITS 9.

The Financial Regulator: New Publications

Consumer Protection Code

All the provisions of the Consumer Protection Code (the “**CPC**”) have been implemented in full by the Financial Regulator since 1 July 2007. The Financial Regulator has provided clarification of certain CPC provisions in an Information Paper, available on its website, which covers such areas as the scope of the CPC, common rules, banking products and services, lending, insurance and advertising. The Financial Regulator has also issued a letter, available on its website, which clarifies the respective obligations of the lender and mortgage intermediaries under provision 4.14 of the CPC.

Client Asset Requirements

The FR has issued new Client Asset Requirements (November 2007) (the “**CAR**”), which apply to both investment firms subject to the provisions of the EC (Markets in Financial Instruments) Regulations 2007 (the “**MiFID Regulations**”) and to investment business firms authorised under the Investment Intermediaries Act (the “**IIA**”). The CAR replace the Financial Regulator’s Client Money Rules (February 2004) (the “**CMR**”) and cover firms that ‘hold’ client money and investment instruments, as defined in the CAR.

A firm is deemed to hold client funds where funds have been lodged to an account opened by the firm with a central bank, qualifying money market fund, eligible credit institution or relevant party on behalf of a client pending investment or reinvestment or being returned to the client, and the firm has the capacity to effect transactions on that account. The funds cease to be client funds upon the investment or reinvestment or return to the client of the funds.

The Financial Regulator has noted on its website that an investment business firm that controlled assets and was subject to the Financial Regulator’s CMR is required to submit a Section 52 report to the Financial Regulator covering the period up to 31 October 2007.

Direct Debit Mandates for Financial Regulator Levy

The Financial Regulator has written to all Irish authorised investment funds requesting that Direct Debit mandates be set up by the funds by 10 December 2007 for the collection of the annual Financial Regulator’s funding levy. This has caused some difficulty for some funds where, for instance, fund bank accounts are not current accounts and do not have a direct debit facility. The Irish Funds Industry Association has highlighted this issue and agreed to meet with the Financial Regulator to see how the matter might be addressed.

FRS 29 (IFRS 7) Financial Instruments: Disclosures

Financial Reporting Standard 29 (“FSR 29”) implements the International Accounting Standards Board’s International Financial Reporting Standard 7 in the UK and Ireland. This standard sets out requirements for disclosures relating to financial instruments and capital. Certain entities, for example those that are not applying FRS 26, are exempt for the application of FRS 29.

The objective of FRS 29 is to provide information to users of financial statements about an entity’s exposure to material risks and how such risks are managed. FRS 29 requires an entity to provide disclosure in its financial statements regarding the significance of financial instruments for the entity’s financial position and performance, and the nature and extent of risks arising from financial instruments and how the entity manages those risks.

The disclosure must be qualitative and quantitative and reflect the techniques employed by personnel to monitor and manage risk. The disclosures must, where relevant, cover the following types of risk:

- ▣ *Market Risk* - The risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.
- ▣ *Credit Risk* - The risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. It can arise from granting loans and receivables to another party, placing deposits with other entities, entering into derivative contracts, granting financial guarantees, and making loan commitments.
- ▣ *Liquidity Risk* - The risk that an entity will encounter difficulty in meeting obligations associated with financial liabilities; it requires that an entity discloses specific information in relation to the liquidity risk arising from financial instruments.

FRS 29, where applicable, must be adopted for all accounting periods beginning on or after 1 January 2007.

Regulatory Regime for “Retail Credit Firms” and “Home Reversion Firms”

The introduction of new provisions in Section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (“the Act”) enacted on 1 November, provides for a new regulatory regime for non-deposit taking lenders to be called “retail credit firms” and “home reversion firms”.

Once authorised, retail credit firms and home reversion firms will become regulated financial service providers for the purposes of both the Financial Regulators Consumer Protection Code and the Financial Services Ombudsman Scheme.

Changes to Data Protection Law

SI No. 657 of 2007, the Data Protection Act 1988 (Section 16(1)) Regulations 2007 (the "Regulations") came into force on the 1 October, 2007. The Regulations implement the registration provisions of the 2003 Act, namely Section 16 thereof, and determine the categories of data controllers and data processors who must register with the DPC.

Under the new regime, all data controllers and data processors must register with the DPC except those exempted or specified by the Minister for Justice Equality and Law Reform (the "Minister") by regulation as not being obliged to register. Those persons expressly exempted are data controllers and data processors who process personal data for the keeping of a public register, in respect of manual data only not otherwise prescribed, or are non-profit organisations processing personal data further to the activities of such organisations.

The Minister has specified that the certain categories of data controllers and data processors are not required to register under the Acts if they hold or process personal data on computer in a manner prescribed in the Regulations: Further details can be provided upon request. In addition, any data processor who processes personal data on behalf of a data controller which falls under any of the exempted categories must register with the DPC.

Data controllers and data processors should be aware that either failing to register with the DPC, where required, or processing data for an unregistered purpose amount to a criminal offence under the Acts. The penalty on conviction in the District Court could lead to a fine not exceeding €3,000 and, on indictment in the Circuit Criminal Court, to a fine not exceeding €100,000. Data controllers and data processors should also be aware that adverse publicity generated by the failure to register and the attendant consequences could damage a firm's reputation. In addition, directors and officers of a firm can be subject to personal liability for failure to register if such failure occurs with the consent, connivance or neglect of the relevant director or officer.

Under the Acts, manual data is data stored or intended to be stored in a structured filing system which enables specific information relating to a particular individual to be readily accessed (e.g. by name or in chronological order). Up until the 24th of October, 2007, the provisions of the Acts applied only to manual data created after the passing of the 2003 Act i.e. created after the 10th of April, 2003. Now that this temporary exemption period has expired, data controllers and data processors will need to ensure that they are in full compliance with their obligations under the Acts in respect of all manual data that they hold. Whilst few records are likely to be solely in manual form this may impact original, signed documents such as employment contracts and legal agreements which are filed in a structured manner.

Securitisation & Structured Finance – Global ABS Conference 2008

We are delighted to announce our sponsorship of the **Global ABS Conference 2008** which is being held this year in Cannes, France on 1st - 4th June, 2008.

The Global ABS Conference attracts thousands of delegates each year, with more than 4,000 delegates attending last year's event. The delegates include a broad range of industry professionals, regulators, investors and issuers who meet to discuss the latest market developments and trends, innovative products and transactions, new legal and regulatory changes and emerging markets and asset classes. Issues to be covered at this year's conference will include analysis and discussions of various topics such as covered bonds, structured insurance, securitisation, CDOs/CLOs, distressed debt, SPV management and corporate governance and many other key areas in the structured products markets.

Members of our Securitisation & Structured Finance team will be speaking at the conference and will be available at our stand to discuss any queries that you may have and to update you in relation to the latest developments in Ireland.






For further information in relation to any of the above matters, please contact any member of our Financial Services department who will happy to assist you with any queries.

CORPORATE LAW UPDATE

Summary of the Companies Consolidation & Reform Bill 2007

The draft Companies Consolidation and Reform Bill 2007 (“the Bill”) presented by the Company Law Review Group (CLRG) represents a major overhaul of Irish Company Law and is an attempt to consolidate the 13 Companies Acts and various Statutory Instruments into a single and more simplified piece of legislation. The new draft Bill is the result of the first comprehensive review of Irish Company Law since the report of the Company Law Review Committee (1958) and when enacted will radically reform the substance and structure of Company Law.




The Heads of the Bill are currently being discussed at Parliamentary Counsel and the following important changes and major areas of reform are proposed:

-  the private company limited by shares becoming the model company (rather than the public company, as is currently the case)
-  the abolition of the doctrine of “ultra vires”
-  the codification of directors’ duties
-  new registration and priority of charges rules
-  a requirement for liquidators to have appropriate qualifications

In this Article, the significant provisions will be discussed and some of the major implications for Irish companies following enactment of the Bill. An analysis of certain comparable provisions in UK Companies Act, 2006 which replaces the Companies Act, 1985 will also be highlighted.

Key Provisions

The Bill includes fundamental changes to the way companies are governed and the following significant reforms are proposed:

-  currently, a private company limited by shares must have two Directors. The Bill provides that a private company limited by shares will be permitted to have only one Director but must have a separate company secretary.
-  a single document “constitution” is envisaged replacing the current requirement for a memorandum and articles of association.
-  the doctrine of “ultra vires” will be abolished. The doctrine operates to render a contract, purportedly entered into by a company, void and unenforceable to the extent that it is not contemplated in the company’s memorandum of association. The private company limited by shares will be given the contractual capacity of a natural person.

▣ private company limited by shares may dispense with an Annual General Meeting (AGM) where the members unanimously agree to do so. The members will also be permitted to pass a majority written resolution.

▣ the codification of directors' fiduciary duties and inclusion of a non-exhaustive list of fiduciary duties which a Director owes to a company. e.g. the requirement to act in good faith, to avoid conflicts of interest etc.

In keeping with the modernisation and simplification agenda of Company Law the Heads of the Bill propose to divide the law pertaining to companies into two separate pillars – Pillar A and Pillar B. The former is exclusively concerned with the private company limited by shares and the latter will govern other corporate entities including PLCs and Designated Activity Companies (“DACs”) amongst other corporate types. The law applicable to private companies limited by shares will be ring fenced from the law applicable to all other types of company with the “private company” to be established as the model type company in Irish Company Law.

Conclusion

The consolidation and reform of Irish Company Law as proposed in the Bill is a radical reappraisal of and reverses the emphasis in the current Companies Acts by establishing the private company as the model company (as opposed to the public company). The streamlining of the establishment and operation of the private company by

removing the doctrine of ultra vires, having a one-document constitution and codifying directors' fiduciary duties, amongst other provisions outlined above, is a welcome and arguably long overdue change.

The proposed legislative changes will simplify the operation of the Companies Acts and lead to an improved corporate governance and compliance culture. In addition, it is hoped that the new streamlined regime will support enterprise creation in Ireland making it a more competitive and attractive place to do business for both indigenous and international companies.

Review of ODCE Activity for 2007

Mr. Paul Ableby, the Director of Corporate Enforcement has issued his interim review of 2007 which shows an encouraging compliance with the Companies Acts 1963 – 2006 (the “Companies Acts”).

Websites and E-mails

The European Communities (Companies) (Amendment) Regulations 2007 (S.I.49 of 2007), became effective on 1 April 2007 requiring the disclosure by some companies on their e-mails and websites of certain information including their names and registered office details. The ODCE reviewed over 100 companies' websites and found 79 of those not to be in compliance. Voluntary compliance was secured in 73 cases by year end and the Office of the Director of Corporate Enforcement (“ODCE”) state that

they are contemplating legal action against the remaining companies. It is advisable to ensure your website or e-mails comply with the new requirements as the ODCE appear to be actively monitoring Irish companies.

Uncovering Suspected Breaches of Company Law Duties

In 2007, 673 new cases came to the attention of the ODCE, a 4% decline on 2006. A significant feature was the reduction in mandatory reporting by auditors and recognised accountancy bodies, dropping by 32%. This was substantially offset by an increase in voluntary reporting from the general public and other regulators including the ODCE.

Number of Restricted Directors and Disqualified Persons

Over 120 directors of insolvent companies were notified to the Companies registration Office in 2007 as having been restricted. The majority of these were restricted by the High Court on the application of liquidators. At end-2007, the register of Restricted Persons contained details of over 780 restricted directors. At end-2007, more than 2,110 persons were listed on the Register of Disqualified Persons. Approximately 1,960 were deemed to be disqualified by virtue of having been convicted on indictment in the last five years of an indictable offence in relation to a company or involving fraud or dishonesty.

Civil Enforcement Proceedings and Criminal Enforcement Proceedings

The ODCE secured a total of 14 disqualifications in 2007, 13 of these being the result of civil enforcement actions. The office also secured two orders arising from High Court compliance proceedings. In 2007, the ODCE secured 28 convictions against seven individuals and companies for various breaches of the Companies Acts. The successful proceedings were taken in respect of the following offences: acting as auditor while unqualified, failing to keep proper books of accounts and acting as a director while restricted and in breach of the statutory conditions relating to company capitalisation.

Directors Press Statement

In the Director's press statement, he warned that "directors who fail to act responsibly may face court sanctions". As such, directors should always be aware of their duties and obligations, particularly if a company is facing any financial difficulties.

For further information in relation to any of the above matters, please contact any member of our Corporate department who will happy to assist with your queries.

TAXATION UPDATE

Budget 2008 – Key Amendments

The Finance Bill 2008 (as initiated) was released on 31st January 2008 and made a number of changes including:-

Remittance Basis of Taxation

The remittance basis of taxation has been extended to include UK source employment (provided that none of the employment is exercised in Ireland) and investment income which was previously excluded.

Close Company Surcharge

The close company surcharge of 20% will no longer apply where one close company pays a dividend to another close company and both have jointly elected to Revenue that the payment is not to be treated as a distribution. This amendment reflects that fact that since 2004 dividends from a non-Irish subsidiary have been excluded from the close company surcharge. The amendment only applies from payments made on or after the 31st of January 2008.

Tax Treatment of Foreign Dividends

Dividends paid to an Irish company from all companies located outside the State are currently taxed at 25% regardless of whether they are paid to the Irish company from passive or trading profits.

The Finance Bill introduces a provision whereby, dividends that are paid from a company located in the EU or a tax treaty country to an Irish company out of “trading profits” will be taxed at 12.5% from the 31st of January 2008. If only part of the dividend is derived from trading profits, then the requisite part will be taxed at 12.5% with the remainder taxed at 25%.

However, if 75% of the distributing company’s profits are trading profits, then the distribution in its entirety will be taxed at 12.5% provided certain other requirements are met. Furthermore, where a company owns more than 5% of the shares in the foreign company it will automatically be taxed at 12.5%.

Dividends paid in connection with a disposal

A new anti-avoidance provision has been introduced in respect of dividends paid in connection with the disposal of shares in a Company and would appear to be designed to counteract the use of pre-disposal dividends as a means of extracting value from the shares of a company, the gain on the disposal of which would be liable to capital gains tax. The new provisions should be considered where a company makes a distribution which can be connected with a disposal of shares. There is an exclusion where the distribution can be shown to have been made for bona fide commercial purposes and not with the main purpose of avoiding tax.

Securitisation & Structured Finance – Key Amendments to Section 110

The Finance Bill 2008 (as initiated) has made two amendments to Section 110 of the Taxes Consolidation Act, 1997 (“Section 110”) which governs Ireland’s securitisation and structured finance regime. The purpose of the first amendment is to extend the definition of assets, which qualify for the benefits of the Section 110 regime (“qualifying assets”) to include:

- i) trading in greenhouse gas emissions allowances (“**Carbon Credits**”); and
- ii) transactions involving insurance and reinsurance policies.

The inclusion of greenhouse gas emissions allowances as qualifying assets confirms Ireland’s commitment to responding to industry and international developments and thus maintains Ireland as one of the forefront locations for securitisation transactions. With regard to the latter, it has been a practice/interpretation of the Revenue Commissioners to recognise securitisation transactions involving insurance and reinsurance policies as falling within the Section 110 regime even though insurance and reinsurance policies were not specifically itemised in the non-exhaustive list of qualifying assets. As such the above amendment essentially puts Revenue Commissioners practice on a legislative footing.

The Bill also proposes amending legislation to clarify that the use of partnerships to hold certain types of financial assets does not prevent an SPV from being treated as a qualifying company within the meaning of Section 110.

The above amendments will apply to instruments executed on or after the date of the passing of the Finance Act 2008.

Finally, in conjunction with the above inclusion of carbon credits to the non-exhaustive list of qualifying assets, the Bill has also introduced an exemption from stamp duty on the sale, transfer or other disposition of same. It is proposed that this change will apply to instruments executed on or after 5th December 2007.

Investment Undertakings (Funds) – Key Amendments

The Finance Bill 2008 (as initiated) contains some welcome amendments to assist the funds industry in administering the 8 year deemed disposal rules.

8 Year Deemed Disposals

Section 36 of the Finance Bill amends the operation of the eight-year deemed disposal provisions for Irish resident or ordinarily Irish resident investors (“Irish Resident”) as introduced by Section 50 of the Finance Act 2000. While the legislation is quite complex, in summary the new amendments provide that the administrative burden of applying the onerous 8 year deemed disposal provisions

should for the most part lie with the Irish Resident investors where they account for a small proportion of the fund's (or the sub-fund's in the case of an umbrella scheme) overall investments.

The main provisions are as follows:

▣ *De Minimis level* – Where taxable Irish Residents hold less than 10% of the fund (calculated by value of shares) or in the case of an umbrella fund, 10% of the sub-fund (calculated by value of shares), then the obligation to account for the tax on any gain arising on an 8 year deemed disposal will be the responsibility of the investor on a self assessment basis (as opposed to the fund or its service providers) i.e. the investor will be required to include the relevant details in their annual return and account for the tax themselves. This however, will only apply provided (i) the fund has made an appropriate election and (ii) it provides in each year of assessment a statement to the Revenue Commissioners in electronic format approved by them, certain details for each unit holder (including a nil return, where applicable) by the 31st of March in the year following the year of assessment.

▣ *Repayment of Excess "first tax"* - Where taxable Irish Resident investors hold less than 15% of the fund (calculated by value of shares) and a refund of tax arises (e.g. subsequent loss on an actual disposal) and the fund has made an appropriate election, the amount of excess first tax over the "second tax" will be repaid by the Revenue Commissioners to the relevant investor rather than by the fund

(on receipt of a claim by the investor). This removes the responsibility of the fund or its service providers having to track the tax over the lifetime of the units and puts the onus on the unit holder to claim the refund directly from the Revenue Commissioners.

▣ *Valuation at 30th June or 31st December* – The Bill also provides that, for purposes of 8-year deemed disposal, the investment undertaking can make an irrevocable election, in relation to the 8-year rule, to value the units at the 30th June or 31st December prior to the date of the chargeable event rather than at the chargeable event itself. This is to avoid having to carry out valuations at various dates during the year resulting in a large administrative burden on the investment undertaking (hence their Administrators).

▣ *Other* - There are some additional amendments which involve technical adjustments to facilitate the operation of the legislation as intended, although it appears that these may require further amendment. In this regard, it should be noted that there is an anomaly on the legislation where there is an apparent lack of a credit for tax paid on a deemed disposal for investors who pay their tax under self-assessment. While we believe this is not intentional, what it means is that under the current provisions a Shareholder can be taxed twice on gains in particular circumstances. The Department of Finance have been made aware of this apparent error in the drafting and they have indicated that they will look at the matter prior to the Finance Act, 2009. Nevertheless, Shareholders who become liable to self assess on deemed gains

on or after 1st January 2009 may have to wait until the enactment of the Finance Act 2009 to know if they can credit any such tax payable (i.e. on an deemed disposal) against tax payable on an actual disposal.

There are also some practical matters that will still need to be resolved and it is intended that the current Revenue guidelines (dated April 2003) in relation to gross roll up funds will be updated accordingly.

Fund Reorganisation / Amalgamation Relief

Chargeable Event / Exit Tax

The current legislation provides for an exemption from exit tax (if any) on the cancellation of units where it is part of a scheme of reconstruction or amalgamation of funds. The cost of the acquisition of the new units is then taken as the cost of the original units. However, Revenue's view was that the current legislation was not wide enough to cover the re-organisation/ amalgamation of sub-funds from different umbrella funds because it requires the issue of units by an investment undertaking (new undertaking) to the unit holders of another investment undertaking (old undertaking) in exchange for the transfer of all the assets and liabilities from the old undertaking to the new undertaking. An umbrella scheme (not the individual sub funds) is defined as an investment undertaking.

Consequently, the new provisions propose to extend the above exemption to the exchange of units in a sub-fund or sub-funds of one umbrella fund for those in another umbrella fund (again the date of acquisition of the new units is then taken as the date of acquisition of the old units). The exemption will be given on condition that the exchange is effected for bona-fide commercial reasons and not primarily for the purpose of avoiding liability to taxation.

Stamp Duty

The above amendment by itself would be of limited effect if stamp duty legislation was not updated accordingly. To that end the Bill proposes the introduction of a new stamp duty legislation, which will provide an exemption from stamp duty on an instrument made for the purposes of or in connection with the reconstruction or amalgamation of an investment undertakings under the new rules provided above. This exemption will apply to instruments executed on or after the date of the passing of the Finance Act 2008.

For further information in relation to any of the above matters, please contact any member of our Taxation department who will happy to assist with any of your queries.

REAL ESTATE/PROPERTY LAW UPDATE

Common Areas Of Apartment Developments

When purchasing an apartment within a development, the usual title furnished is long leasehold. This may be either Land Registry long leasehold or Registry of Deeds long leasehold. Each development has communal areas, which are used by all apartment owners to access their respective apartments. Accordingly, the freehold title to the development is not transferred to any one apartment owner and is retained by the landowner. This includes all of the common areas. The common areas can include, but are not limited to, the entrance to the apartment block, elevators, stairways, open spaces and parking spaces.

In the normal course of events a management company is incorporated for the purpose of accepting a transfer of the common areas from the freehold owner, and to maintain and upkeep the common areas within the development and the management company, in which the owner of the freehold title to the property contracts to sell the common areas within the development to the management company for a nominal fee of €0.00 or thereabouts.

Once the agreement for sale of the common areas to the management company is executed, the management company

has a beneficial interest in the property. Accordingly, the management company joins with the freehold owner of the property as a party to the lease for the purposes of effecting the transfer of the property to the purchaser. The freehold owner of the property may be either a company or an individual. The lease is the document which gives the purchaser title to the property, and is usually for a period of 999 years or 500 years, subject to an annual nominal rent in the sum of €1.00 or thereabouts. The lease contains covenants and conditions which bind the purchaser, the vendor and the management company.

The developer maintains responsibility for the common areas within the development until the transfer of the common areas to the management company has been effected. The exception to this is where some of the common areas, such as the roads and services within the development are taken in charge by the local authority.

Each apartment owner is obliged to become a member of the management company on closing and to pay an annual service charge towards the upkeep of the common areas. When purchasing an apartment within a development, the contract for sale will usually contain a special condition which provides as follows:

“The purchaser hereby applies for membership of and agrees to become a member of the management company. The purchaser shall be furnished with a membership certificate in the management company on the closing day.”

In theory, the transfer of the common areas within a development to the management company should be effected once the last apartment within the development is sold. In practice, the transfer of the common areas within a development may be outstanding in excess of 10 years. The contract for sale usually provides that the vendor's solicitor undertakes to procure the transfer of the common areas within the development to the management company on the sale of the last unit in the development. A solicitor's undertaking to this effect is furnished on completion of the purchase of the property.

If the owner of an apartment within a development sells his or her apartment prior to the transfer of the common areas to the management company being effected, the apartment owner, as vendor, may assign the benefit of the undertaking furnished to him or her on closing to the new purchaser of the property. The new purchaser may continue to rely on the benefit of the vendor solicitors' undertaking to procure the transfer of the common areas to the management company.

This article was first published on www.internationallawoffice.com - the Official Online Media Partner to the International Bar Association, an International Online Media Partner to the Association of Corporate Counsel and European Online Media Partner to the European Company Lawyers Association.

For further information in relation to any of the above matters, please contact any member of our Property department who will happy to assist with your query.

MARITIME LAW UPDATE

The Irish Shipping Market – a new boom?

The global shipping market is currently enjoying one its longest booms in modern history. Globally in 2006, over US\$156bn was raised to fund orders for new ships and this was coupled with a further US\$80bn for second-hand vessels. This is a dramatic expansion since 2002 when the annual market averaged out at US\$36bn a year. European ship owners are reported to be at the forefront of driving the purchasing spree and accounted for 38% of all new vessels purchased in 2006.

Shipping markets are typically driven by strong global growth but world seaborne trade is obviously a key driver and China's entry to the globalised economy has also had an impact. The major rally in markets since 2002 have seen earnings triple in value; the average composite charter index of earnings in 2000 was US\$12,500 per day and today it is estimated to be US\$36,000 with large bulk and tanker vessels earning in excess of US\$100,000 per day.

Even though the Irish shipping and export market continues to face cost competitiveness challenges, primarily due to further appreciation of the Euro against the US Dollar and the volatility in oil prices, there has been a high level of activity both on the national and international fronts. In total, the Irish Maritime Development Office ("**IMDO**") has reported that at least 75 new projects were activated

in 2007. At least seven shipping companies initiated due diligence for entry into Irish tonnage tax with four submitting tonnage tax applications before the end of December and the remainder have been reported as seeking to complete their application in early 2008. Significantly, six of these shipping firms are non-Irish firms intending to establish strategic management operations in the country. In 2007, IMDO assisted several new noteworthy start-up operations in ship management and operations such as *Seabess* in the coastal bulk market and *HydroServ* in the offshore survey market. The IMDO also assisted with the start up of Ireland's first dedicated marine recruitment agency which has quickly expanded its operations here during its first 12 months. In addition, a number of Irish based shipowners have completed vessel acquisitions recently.

The IMDO has estimated that in 2007 the Irish shipping services sector employed more than 8,300 people in over 330 companies which have a combined annual turnover of EUR1.86bn. The current global market will no doubt increase pressure on the Irish sector for greater competitiveness, quality and efficiency over the coming years but the prognosis is still good for Ireland. Currently the global trade is approximately 7.1bn tons and this is expected to double to over 14 billion tons by 2015. This growth will clearly require more ships which in turn will require additional financing and a competent workforce which can facilitate these deals and the sustained growth across the sector.

More recently, Ireland has become an emerging centre for complex ship finance transactions with very significant securitisations of portfolios being structured here. It is hoped that Ireland's aircraft leasing and financial services success can be used as a model for the Irish shipping sector. The IMDO believes that, because of the similarity of the structuring of these types of deals, Ireland could emulate the level of activity and success of the aviation sector within 10-15 years and increase its global market share to US\$15bn by as early as 2010.

Ireland is an attractive investment centre because it is an EU and OECD country with a stable legal system and internationally recognised financial services centre. It also has a highly educated English speaking workforce and a dedicated competitive tonnage tax regime, bolstered by a 12.5% corporation tax rate, which means that it is well placed to prosper from the continued growth of the global shipping market. Indeed, the rapidly emerging Irish ship finance and leasing sector is now ranked within the top 15 ship finance locations in the world. Despite the current difficulties in global markets, the forecast appears to be excellent for this sector and Ireland is ready to contribute to the continued global growth.

For further information in relation to any of the above matters, please contact any member of our Admiralty & Maritime or Financial Services departments who will happy to assist with any of your queries.

LISTING UPDATE

Debt Listing Update

December 2007

AIG FP Matched Funding (Ireland) plc issued by final terms Series 2007 IRE 03 CZK 1,010,000,000 Zero Coupon Notes due 26th November 2009 as well as Series 2007 IRE 05 USD 49,000,000 Floating Rate Notes due December 2008. Both final terms were issued under the Banque AIG \$20,000,000 EMTN Programme dated 26th September 2007. Banque AIG also filed a supplemental 8K to the same programme. AIG Inc. filed a supplemental 8K as well, in connection with its \$20,000,000,000 EMTN programme dated 10th August 2007.

On the CDO/CLO front, Tivoli Finance Limited listed \$25,000,000 of Secured Managed Portfolio FX and Credit Linked Notes due in 2010. The Arranger and Dealer for the deal was JP Morgan

January 2008

Banque AIG and AIG Inc. supplemented their respective EMTN programmes. AIG Inc. also issued Final Terms off its EMTN programme, SKK 450,000,000 5.145% Notes due 2022.

February

AIG FP Matched Funding (Ireland) plc issued final terms Series 2008-IRE04 EUR70,000,000 structured variable rate notes due 31 March

2015. In repack, Corsair Finance (Ireland) Limited listed three series of notes (Series 97, 100 & 101) under its 2007 Programme for the Issuance of Notes and other Secured Obligations.

Funds Listing Update

December 2007

Stellation Capital Fund Limited listed in December. Managed by Stellation Asset Management LLC, its objective is to generate superior returns - even in flat equity market conditions - while keeping volatility to levels meaningfully lower than the US and global equity indices, and not much higher than US bond indices.

This period also saw a number of SGAM Funds list – these included SGAM A.I. Portable Alpha Premium-Alpha Concentrated Enhanced Fund a sub fund of SGAM AI Portable Alpha Premium Fund and SGAM AI Enhanced Funds, a new umbrella with one sub fund (SGAM A.I. Enhanced Credit Engine A Fund) whose investment objective is to provide an absolute return through a leveraged investment of its assets in a Master Fund, which invests in a diverse portfolio of investments and instruments and will seek to achieve medium to long term capital appreciation by engaging in various strategies mainly focused on credit markets.

Lyxor launched two new funds. Lyxor Marshall Wace Tops International Fund Ltd and Lyxor Observatory Credit Markets Fund Ltd.

January 2008

The Icelandic bank Landsbanki completed their first fund listing on the ISE, listing Landsbanki Absolute Return Strategies, managed by Landsvaki hf. The fund aims to provide access to performance through investment exposure to the RBC HEDGE250 INDEX® for a minimum of 50% of the Fund assets with the balance in such related investments as deemed appropriate to enhance the Index Return. Also listing was F&C Zircon Fund Limited, which invests in European exchange traded equities through a master feeder structure. Lyxor listed

Lyxor/Japan Value Realization Fund Limited, Lyxor/Longacre Special Equities Offshore Fund Limited, Lyxor/Asia Value Realization Fund Limited, Lyxor/PSAM Europe Fund Limited and Adequity Trust – Lyxor Dynamic Alternative Energy Fund.

A number of existing umbrella funds launched new subfunds during the period, such as BC Alternative Investments plc - the BC Lambada Fund, Investec Alternative Strategies plc - Quantitative Multi-Strategy Fund, Coronation Universal Fund - Coronation Global Equity Fund of Funds. Cowen Funds plc. launched a number of sub funds this period, including Cowen European Focus Fund, Cowen American Focus Fund, Cowen UK Focus Fund, Cowen Global Focus Fund, Cowen Far East Focus Fund and Cowen Climate Change Fund.

February

Maple-Brown Abbott Funds plc a new umbrella fund listed 3 sub funds namely Maple-Brown

Abbot Asia-Ex Japan Fund, Maple-Brown Abbott Asia Pacific-Ex Japan Fund and Maple-Brown Abbott Australian Equity Fund. The objective of each sub fund being to outperform specific market indices across Asia (excluding Japan), Asia Pacific and Australia. Each fund will invest at least two-thirds of its total assets in listed equities either directly in their locally domiciled market, or indirectly through Global and American Depository Receipts listed on the Luxembourg, London or New York Exchanges or in the case of the Maple-Brown Abbot Australian Equity Fund in Australian listed equity securities of companies or derivatives. The fund is managed by Maple-Brown Abbott Limited.

EACM/Mellon Multi-Strategy Funds Plc another new umbrella fund listed one sub fund. EACM/Mellon Absolute Return (Dublin) Fund is to seek to generate consistent long-term capital appreciation with moderate volatility and moderate correlation to global equity and fixed income markets. It aims to achieve its objective through active investment in a diversified portfolio of collective investment schemes.

JPMorgan Global Funds listed a new sub fund. JPM JPY Money Market Fund seeks current income with liquidity and stability of principal. The Fund will invest exclusively in short duration fixed income securities, denominated in JPY which are listed or traded on recognised exchanges.

For further information in relation to any of the above matters, please contact any member of our Listing team or Financial Services department who will be happy to assist with your query.

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