

Group Briefing

How to Convert an
Investment Company to an
ICAV

The Irish Collective Asset-management Vehicles Act 2015 (the “Act”) was signed into law by the President of Ireland on 4 March 2015 and came into effect in its entirety on 12 March 2015. The Act provides for the establishment of the new Irish corporate investment fund vehicle that is specifically tailored to the needs of the global funds industry.

The ICAV is a bespoke corporate structure which will avoid the need for compliance with certain Irish company law requirements. The ICAV is also expected to be able to elect to meet the US “*check the box*” taxation rules which will allow US taxable investors to avoid certain adverse tax consequences that would normally apply to passive foreign investment companies.

The Act contains a mechanism for existing investment companies to convert to an ICAV by way of continuation. The conversion process is straightforward and many existing Irish funds are expected to avail of this process. The way in which an existing investment company will be able to convert to an ICAV is similar to two conversion processes already used for Irish umbrella funds, one relating to the move from cross liability to segregated liability, and the other when a fund is re-domiciling. The main difference with the ICAV conversion process is that the application for conversion is made solely to the Central

Bank and not to the Irish Registrar of Companies.

This briefing sets out the steps to be followed for an investment company to apply to the Central Bank to convert to an ICAV.

1. AMENDMENTS TO MEMORANDUM & ARTICLES OF ASSOCIATION

The Act requires that an investment company may convert to an ICAV where it is permitted to do so by its memorandum and articles of association (“M&A”). Where the M&A does not contain provisions permitting the conversion then the M&A must be amended in order for the conversion to proceed. This amendment will require the approval of the shareholders of the investment company.

2. INSTRUMENT OF INCORPORATION

A new incorporation document for the ICAV will need to be prepared which is called the instrument of incorporation. The instrument of incorporation will replace the investment company’s M&A and certificate of incorporation when it converts to an ICAV. The instrument of incorporation will contain similar disclosures to the M&A in relation to the objects and share capital of the ICAV. Specifically, the instrument of

incorporation must provide that:

- » the sole object of the ICAV is the collective investment of its funds in property and giving members the benefit of the results of the management of its funds;
- » the actual value of the paid-up share capital of the ICAV shall be at all times equal to the value of the assets of the ICAV, after deduction of its liabilities;
- » the shares of the ICAV shall, at the request of any of its shareholders, be purchased by the ICAV directly or indirectly out of the ICAV assets unless and to the extent as may be approved by the Central Bank;
- » the share capital of the ICAV shall be equal to the value of the issued share capital of the ICAV; and
- » share capital is to be divided into a specified number of shares without assigning any nominal value to them.

The ICAV’s constitutional document may be amended without shareholder approval in respect of changes that do not prejudice the interests of shareholders and do not come within certain categories of changes specified by the Central Bank of Ireland. This will give the ICAV the same flexibility that unit trusts have when amending their constitutional document.

3. APPLICATION TO THE CENTRAL BANK

In order for an investment company to convert to an ICAV, a conversion application must be prepared and submitted to the Central Bank. The following documents will need to be filed with the Central Bank:

- » a copy of the certificate of incorporation of the investment company;
- » a certified copy of the M&A of the investment company;
- » a certified copy of the instrument of incorporation in respect of the proposed ICAV;
- » a list setting out details of the registered office, directors and secretary of the investment company;
- » a statutory declaration of a director of the investment company made not more than 28 days before the date on which the application is made to the Central Bank to the effect that:
 - » no petition or other similar proceeding has been made to wind-up or liquidate the investment company;
 - » no receiver, liquidator, examiner or other similar person has been appointed in respect of the investment company;
 - » no scheme, order, compromise or other similar arrangement has been entered into by the investment company with its creditors;
 - » the conversion is permitted by and has been approved by the shareholders in accordance with the M&A of the investment company; and
 - » any consent to the proposed conversion required by any contract entered into or undertaking given by the investment company has been obtained;
- » a declaration of solvency from a director of the investment company;
- » a schedule of charges or security interests created or granted by the investment company;

- » where applicable, a description of any change to the proposed name of the investment company following its conversion to an ICAV (other than where the only change is to delete the words “public limited company” or “plc” from the company’s existing name); and
- » a statutory declaration that the above requirements have been complied with. This declaration can be made by a director of the investment company or a solicitor on behalf of the investment company. The Central Bank may take this statutory declaration as sufficient evidence of compliance with the above requirements.

The Central Bank’s conversion application forms are available on its website..

4. CONVERSION PROCESS

Once the Central Bank has received a completed application for conversion, it shall:

- » publish a notice of the proposed conversion in *Iris Oifigiúil*, the official state gazette in Ireland;
- » issue a registration order in respect of the registration of the investment company as an ICAV; and
- » enter in a register the details of charges or security interests of the ICAV.

Once the certificate of registration has been issued, the investment company shall be deemed to be an ICAV under ICAV legislation. The final step will be for the investment company to apply to the Irish Registrar of Companies to be de-registered as an investment company with effect from the date of its registration as an ICAV.

We expect that the entire conversion process will take approximately 6 to 8 weeks. Once the investment company has been registered as an ICAV, it is also authorised to carry on its business.

5. CONSEQUENCES OF CONVERSION

The conversion of the investment company to an ICAV will not affect the authorisation of the investment company as a UCITS or an AIF. However the

name of the investment company will change by the removal of “plc” or “public limited company” and its replacement with “ICAV” or “Irish Collective Asset-management Vehicle”. The prospectus, material contracts, marketing material and KIIDs, where relevant, of the investment company will need to be updated to reflect that the investment company is an ICAV and the legislation under which it is incorporated. However, it will not be necessary to amend the existing service provider contracts which continue, and the ICAV will be able to use the past performance data relating to its existence as an investment company.

The conversion of an investment company to an ICAV will not operate to:

- » create a new legal entity or affect the identity or continuity of the existing entity;
- » affect the continuity of the existing entity;
- » affect any contract, resolution or any other act or thing done in relation to the existing entity during its lifetime;
- » affect the rights, authorities, functions and liabilities or obligations of the existing entity or any other person; or
- » render defective any legal proceedings by or against the existing entity.

6. CONCLUSION

As the conversion process is straightforward, many existing Irish funds are expected to avail of this process.

Now that the Act has been signed into law, the Central Bank has indicated that it will begin accepting and processing applications for the authorisation of ICAVs within two weeks of the enactment of the Act.

[A copy of the Act is available here.](#)

Arthur Cox was a contributing member of the legislative group responsible for the preparation of the Act.

KEY CONTACTS

If you have any queries on this briefing, or require any further details on any aspect of the ICAV, please do not hesitate to contact a member of our team:



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