

Group Briefing

Irish Collective Asset
Management Vehicle (ICAV)
Act 2015

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.

ICAV

The ICAV is a new Irish corporate fund vehicle that will exist as the fifth type of legal structure alongside the current Irish fund structures (i.e. the investment company, unit trust, common contractual fund and investment limited partnership).

One of the main advantages of the ICAV is that it will be able to elect in its classification, under the US "check the box" taxation rules, to be treated as a transparent entity for US federal income tax purposes. This will allow US taxable investors to avoid certain adverse tax consequences that would normally apply to "passive foreign investment companies".

In addition, the ICAV has been specifically designed to be distinguishable from a typical company. Most Irish funds are authorised as investment companies and, as such, are required to comply with many of the rules applicable to companies which are not relevant or appropriate in the funds context. The ICAV is a bespoke corporate

structure that will avoid the need for compliance with certain Irish company law requirements. This will result in reduced administrative obligations and costs.

For example, the ICAV may:

- » amend its constitutional document 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 (the "Central Bank"),
- » prepare separate financial statements for sub-funds,
- » issue debenture stock, bonds and any other securities,
- » allow directors to dispense with the holding of an AGM by giving written notice to all shareholders, and
- » avail of the existing merger mechanisms available to UCITS and AIFs.

STRUCTURE

The ICAV is most similar to an investment company. Like an investment company, an ICAV will be a corporate entity that will be governed by a board of directors and owned by its shareholders. The ICAV will be as flexible as the investment company in that it may be formed as an open-ended, closed-ended or limited liquidity fund.

However, unlike an investment company, the ICAV will be subject to its own legislative regime distinct from the Irish Companies Acts and the incorporation of the ICAV will be carried out by the Central Bank rather than the Irish Registrar of Companies.

The ICAV will be capable of being authorised by the Central Bank as either a UCITS or as an alternative investment fund ("AIF"). The ICAV can also be established as an externally-managed or a self-managed entity.

CONVERSION TO AN ICAV

The Act contains a mechanism for existing investment companies to convert to an ICAV. The conversion process is straightforward and many existing Irish funds are expected to avail of this conversion mechanism. The way in which an existing investment company can convert to an ICAV is similar to the process that was provided for in 2005 for umbrella funds to convert into segregated liability structures. The conversion process is also very similar to the fund re-domiciliation process that is currently provided for in the Irish Companies Acts, with the main difference being that the application for conversion is made solely to the Central Bank and not to the Irish Registrar of Companies.

The conversion is done by submitting an application to the Central Bank containing the required fund documentation and statutory declarations. The Central Bank will then publish a notice of the proposed

conversion in Iris Oifigiúil, the official state gazette in Ireland, and, once the Central Bank has processed the application, it will issue a certificate of registration as an ICAV. The final step will be for the investment company to apply to be deregistered in the Irish Registrar of Companies.

We expect that the entire conversion process should take approximately 6 to 8 weeks.

The conversion of an investment company to an ICAV will not create a new legal entity, affect the continuity of the existing entity, affect any contract or action during the investment company's lifetime or affect the rights, obligations or any legal proceedings against the investment company.

If you require more detailed information on the conversion process [please refer to our website](#).

MIGRATION OF NON-IRISH COMPANIES

The Act contains a mechanism for existing corporate collective investment schemes established in the Cayman Islands, the British Virgin Islands, Bermuda, Jersey, Guernsey and the Isle of Man to migrate to Ireland as an ICAV by way of continuation. The migration process is the same as the fund re-domiciliation process that was introduced in Ireland in 2009, pursuant to which non-Irish funds can move to Ireland and become subject to Ireland's regulatory

regime for investment funds. The main difference with the ICAV migration process is that the application for migration is made solely to the Central Bank and not to the Irish Registrar of Companies.

The migration process involves the submission of a number of documents to the Central Bank, including the offering document, constitutional document, certificate of registration, and statutory declarations from the non-Irish fund. Once the Central Bank is satisfied with the migration application it shall notify the non-Irish fund that it proposes to authorise it as an ICAV and shall publish a notice of the proposed migration in Iris Oifigiúil, and issue a certificate of registration of the non-Irish fund by way of continuation as an ICAV. Once the certificate of registration has been issued, the non-Irish fund shall be deemed to be an ICAV and may carry on business under ICAV legislation. The Central Bank will then publish a notice in Iris Oifigiúil setting out the date of the registration of the non-Irish fund as an ICAV and its former name (if applicable) and jurisdiction.

The entire migration process should take approximately 6 to 8 weeks.

The final step is that the newly-established ICAV must apply to be deregistered in the jurisdiction from

which it has migrated and notify the Central Bank once this has been done.

The migration of a non-Irish fund to an ICAV will not operate to:

- » create a new legal entity or affect the identity or 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.

If you require more detailed information on the migration process [please refer to our website](#).

TIMING

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 the next few weeks.

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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