

Group Briefing

How to Migrate an
Investment Fund to Ireland
as 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 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 redomiciliation 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 of Ireland (the “Central Bank”) and not to the Irish Registrar of Companies.

This briefing sets out the steps to be followed for a non-Irish fund to apply to the Central Bank for authorisation as an ICAV in Ireland.

PERMISSION TO MIGRATE

A non-Irish fund may only be permitted to migrate to Ireland as an ICAV where it is permitted to do so by its constitutional document. Where the constitutional document does not contain provisions permitting the migration, then the constitutional document will need to be amended to allow for the migration.

APPLICATION TO THE CENTRAL BANK

The migration process involves the submission of the following documents to the Central Bank:

- » a completed application form to the Central Bank for the migration of the non-Irish fund to Ireland as an ICAV and an application for its authorisation as a UCITS fund or as an alternative investment fund (“AIF”);
- » a certified copy of the certificate of registration and constitutional document in respect of the non-Irish fund;
- » a copy of the instrument of incorporation in respect of the proposed ICAV;
- » a list setting out details of the directors and secretary of the non-Irish fund;
- » a statutory declaration of a director

of the non-Irish fund made not more than 28 days before the date on which the application is made to the Central Bank to the effect that:

- i. no petition or other similar proceeding has been made to wind-up or liquidate the non-Irish fund;
- ii. no receiver, liquidator, examiner or other similar person has been appointed in respect of the non-Irish fund;
- iii. no scheme, order, compromise or other similar arrangement has been entered into by the non-Irish fund with its creditors;
- iv. notice of the proposed redomiciliation has been served on the creditors of the non-Irish fund in advance;
- v. any consent to the proposed migration required by any contract entered into or undertaking given by the non-Irish fund has been obtained or waived; and
- vi. the migration is permitted by and has been approved in accordance with the constitutional document of the non-Irish fund;

- » a declaration of solvency from a director of the non-Irish fund;
- » a schedule of any charges and security interests granted by the non-Irish fund that would have been registerable in Ireland had the non-Irish fund been created as an Irish ICAV;
- » notification of the proposed name and registered office of the ICAV;
- » any regulatory fee imposed by the Central Bank; and
- » a statutory declaration by a solicitor or by a director of the non-Irish fund confirming that all of these requirements have been met.

In addition, the non-Irish fund's constitutional document, offering document and service provider agreements will need to be amended to comply with Irish law and meet the requirements of the Central Bank to become authorised as a UCITS fund or as an AIF in Ireland.

MIGRATION PROCESS

Once the Central Bank is satisfied with the migration application it shall notify the

non-Irish fund that it proposes to authorise the non-Irish fund as an ICAV and shall:

- » publish a notice of the proposed migration in *Iris Oifigiúil*, the official state gazette in Ireland;
- » issue a certificate of registration of the non-Irish fund by way of continuation 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 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 to apply to be de-registered in the jurisdiction from which it has migrated and to notify the Central Bank once this has been done.

CONSEQUENCES OF MIGRATION

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.

CONCLUSION

The ICAV migration process will be straightforward and many corporate collective investment schemes established in the Cayman Islands, the British Virgin Islands, Bermuda, Jersey, Guernsey and the Isle of Man are expected to avail of this process.

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:



KEVIN MURPHY
PARTNER, CO-HEAD OF ASSET MANAGEMENT &
INVESTMENT FUNDS
+353 1 920 1177
kevin.murphy@arthurcox.com



TARA O'REILLY
PARTNER, CO-HEAD OF ASSET MANAGEMENT &
INVESTMENT FUNDS
+353 1 920 1787
tara.oreilly@arthurcox.com



SARAH CUNNIFF
PARTNER
+353 1 920 1171
sarah.cunniff@arthurcox.com



DARA HARRINGTON
PARTNER
+353 1 920 1206
dara.harrington@arthurcox.com



CORMAC COMMINS
PARTNER
+353 1 920 1786
cormac.commins@arthurcox.com



IAN DILLON
+353 1 920 1788
ian.dillon@arthurcox.com

arthurcox.com

Dublin

+353 1 920 1000
dublin@arthurcox.com

Belfast

+44 28 9023 0007
belfast@arthurcox.com

London

+44 207 823 0200
london@arthurcox.com

New York

+1 212 782 3294
newyork@arthurcox.com

Silicon Valley

+1 650 943 2330
siliconvalley@arthurcox.com