

# Irish Collective Asset-management Vehicles (ICAV)

## Introduction

On 29 July 2014, the Irish Government published the Irish Collective Asset-management Vehicle (ICAV) Bill 2014 (the **ICAV Bill**), with a view to enacting legislation by the end of 2014. This new corporate structure will be tailored to the needs of the global funds industry and will have a number of advantages over existing forms of investment vehicle.

## History

The IFSC Strategy Statement 2011-2016 commits the Government to the development of proposals for a new type of corporate vehicle for the funds industry aimed at enhancing the attractiveness of Ireland as a domicile for collective investment funds. This was partially in response to the adoption in the UK of the Open-ended investment company (OEIC, though it is explained below that an ICAV may be closed-ended) and the SICAV that is used in other European jurisdictions.

To this end, it was announced in March 2012 that a drafting process would begin with a view to introducing heads of bill, which were subsequently published in December 2013. The first draft of the ICAV Bill was published in July, with enactment expected later in the year.

Many Irish regulated funds are currently structured as public limited companies (PLCs), established under Part XIII of the Companies Act 1990. While the PLC structure has served the funds industry well, some existing requirements under Irish and European company law serve no real purpose where investment vehicles are concerned. ICAVs will not be subject to these requirements and this should result in a reduced administrative burden and reduced costs.

## Advantages

The key driver behind the creation of ICAVs is to create a separate and distinct corporate fund regime that will simplify the creation and administration of investment funds in Ireland and overcome two particular difficulties faced by investment funds established as PLCs:

- The ICAV structure has been specifically tailored to the requirements of investment funds; as such, the legislation seeks to remove a number of the requirements under general Irish and European company law that currently apply to investment funds established as PLCs. This should result in ICAVs being able to avoid administrative costs associated with compliance with rules and regulations more appropriate to trading companies.
- ICAVs will be able to elect their classification under the US "check-the-box" taxation rules. This would allow an ICAV to be treated as a partnership for US tax purposes, and so avoid certain adverse tax consequences for US taxable investors. This is in contrast to the status of the Irish PLC which is not able to check-the-box for US tax purposes giving rise to potential treatment as a Passive Foreign Investment Company (PFIC) for US investors which depending on the precise status of the investor and the elections it makes can give rise to a greater tax and administrative burden than if the fund is able to "check-the-box".

## Features

- The Central Bank will be the supervisory authority for ICAVs.
- The ICAV will have a governing document called an "Instrument of Incorporation" (IOI). The IOI will be the constitutional document of the ICAV, similar to the Memorandum and Articles of Association of a PLC.
- An ICAV will have its own legislative regime. It will not have the status of a "company", which by definition is established under the Irish Companies Acts. It will therefore not be subject to those aspects of company law legislation which are not relevant or appropriate to an investment fund, such as certain CRO filing requirements and obligations arising under EU legislation.
- In the case of changes to the IOI there will be no requirement to obtain prior investor approval where the ICAV's depositary certifies that changes to the IOI do not prejudice the interests of investors. (This concept is borrowed from the requirements relating to changes to the trust deed of a unit trust.)
- An ICAV may be established as a single fund or as an umbrella structure and can be listed on a stock exchange. Investors will own shares in the ICAV and an open-ended ICAV will be able to issue and redeem shares continually according to investor demand, as is the case with existing forms of open-ended fund. Sub-funds will not have separate legal personality but in certain circumstances may behave as if they do.
- Like a PLC, an ICAV must have a board of directors. Similar to other collective investment schemes, the ICAV may either be managed by an external management company or be a self-managed entity.
- The board of directors of an ICAV will be able to dispense with the holding of an annual general meeting.
- ICAVs will be capable of being either a UCITS or an AIF, and similar custodian/depositary requirements as currently exist for UCITS/AIFs will apply to ICAVs (which will vary depending on whether the ICAV is a UCITS or AIF). AIF type ICAVs will be able to be open ended, open ended with limited liquidity or closed ended.
- Part XIII investment companies are currently subject to a statutory requirement to spread investment risk which will not apply to ICAVs.
- Regarding financial statements, ICAV sub-funds will be able to produce their own sub-fund-by-sub-fund accounts, and preparation of financial statements for an ICAV (and/or its sub-funds) will be governed by the requirements for UCITS or AIFs. This contrasts with the existing regime where corporate funds must produce one consolidated set of financial statements.
- Existing funds established as PLCs under Part XIII of the Companies Act 1990 will have the option to convert to ICAVs. However, there is no provision within the legislation to re-convert an ICAV to a PLC.
- Provision will be made for the migration of funds domiciled outside of Ireland into Ireland as ICAVs by continuation.

## Conversion process

The ICAV Bill outlines the process by which an ICAV can be created from an existing Part XIII PLC, and the process is a comparatively and deliberately simple one.

The converting entity must submit its Memorandum and Articles of Association to the Central Bank along with an IOI for the new ICAV and a statutory declaration of solvency from a director.

Of course, the provisions in the ICAV Bill for establishing a new ICAV must be complied with (again, this is envisaged as a comparatively straightforward process) and in the case of a conversion compliance with these provisions must be sworn by a director or solicitor acting on behalf of the converting entity.

Once satisfied that everything for conversion is in order the Central Bank will issue a certificate of registration and publish a notice in the CRO Gazette.

### Role of the Central Bank

It is envisaged that the Central Bank will act not only as regulator for ICAVs, but also as the authorising and reporting body for ICAVs.

### Conclusion

The ICAV Bill sets out a new form of investment vehicle designed specifically to streamline the processes of establishment and administration of funds in Ireland, and to encourage US investment that might currently be deterred by the interaction of the US tax code with Irish corporate legislation.

It should be noted that the final Act that emerges from the legislative process will have undergone a number of reviews and edits, and any of the above commentary may be outdated by the time any ICAV legislation becomes enacted. That said, the drafting of the legislation to date has been a funds-industry-led process, with regulators and other players consulted throughout. As such – and given that this has been stated as a priority by Government – legislation substantially along the lines of that described above is expected to be enacted in 2014.

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