Fund structures: *VCCs/Variable Capital Companies*

Irish investment fund products can be constituted in various legal forms. A range of factors can influence the choice of legal vehicle, including tax treatment, risk spreading requirements, local market requirements and market preferences.

The structuring options include a Variable Capital Company (**VCC**), an Irish Collective Asset-management Vehicle (**ICAV**), a Unit Trust, an Investment Limited Partnership (ILP) and a Common Contractual Fund (**CCF**). This briefing looks at the VCC, and is part of a series on each of the above Irish fund structuring vehicles.

What is a VCC?

The VCC was historically a popular vehicle chosen for funds. It is a public limited company whose share capital does not have a par value but is equal to the net asset value of the VCC at any time. It has a separate legal personality established by its incorporation with memorandum and articles of association as its constitutional document.

How is a VCC created?

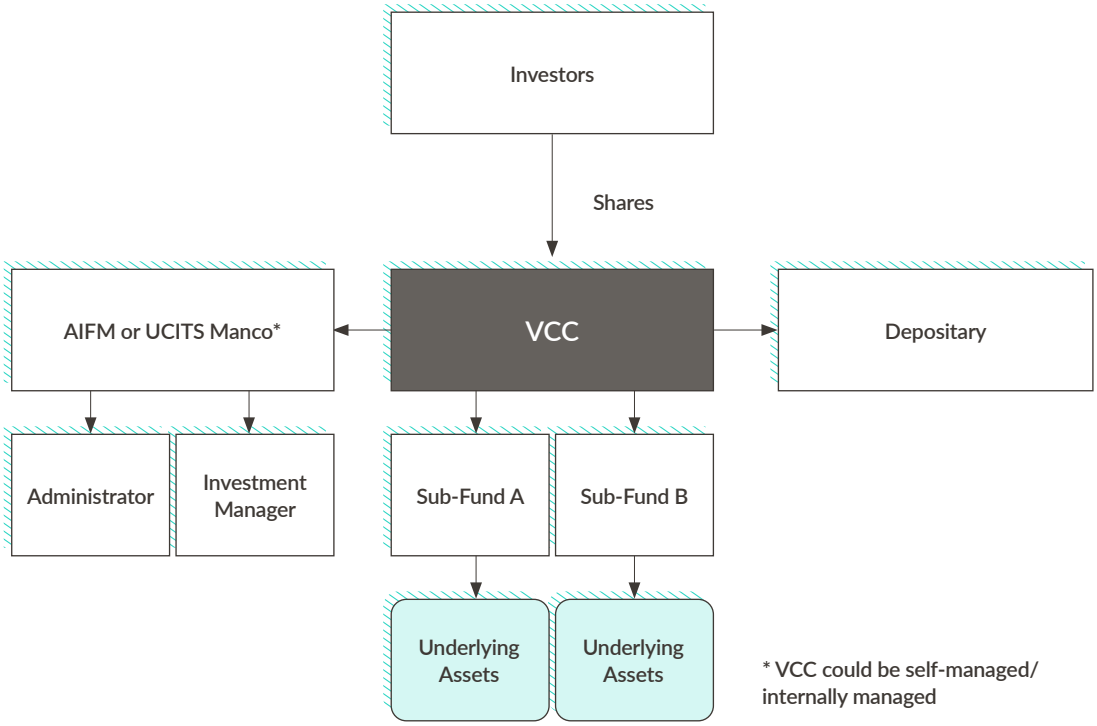
A VCC is created upon incorporation by the registrar of companies following the submission of a form A1 and draft memorandum and articles of association to the companies registration office. The form A1 contains information about the VCC including details of the directors and secretary, registered office and subscribers.

How is a VCC structured?

As a corporation, a VCC is a separate legal entity, managed and controlled by its board of directors, which can enter into contracts in its own name. The VCC's day to day management and control is carried out by a board of directors, which generally delegates many functions to service providers.

The board of the VCC may appoint a manager (as distinct from an investment manager) but is not obliged to do so. A variety of third party service providers offer this service. Alternatively a promoter may choose to appoint its own manager.

VCC/ Variable Capital Company



Regulatory regimes.

A VCC may be authorised as a UCITS (in which case it must be open-ended). UCITS are subject to the UCITS regime (which includes the Central Bank of Ireland's UCITS Regulations) and the provisions of the Companies Acts 2014, except as provided in the UCITS Regulations.

A VCC may be authorised as an Alternative Investment Fund (**AIF**) under the Companies Act 2014 in one of two categories:

- A Retail Investor AIF (**RIAIF**) which may be marketed to retail investors.
- A Qualifying Investor AIF (**QIAIF**) which may be marketed to Qualifying Investors.

Both RIAIFs and QIAIFs are subject to the AIFMD regime (which includes the Central Bank of Ireland's AIF Rulebook) and the provisions of the Companies Acts 2014.

Liquidity

VCCs may be open-ended or, if authorised as RIAIFs or QIAIFs, may have limited liquidity or be closed-ended.

Umbrella/ Single fund/ Segregated Liability between sub-funds

VCCs may be single funds or umbrella funds. Since July 2005, Irish VCCs established as umbrella funds enjoy segregated liability between sub-funds. Those established prior to July 2005 have been able to adopt segregated liability since the legislation was introduced.

What do investors hold?

VCCs issue shares to investors. These shares do not represent a legal or beneficial interest in the VCC's assets, those assets being legally held by the Depositary and beneficially by the VCC itself.

Main advantages

- Many jurisdictions recognise a corporate fund structure, such as a VCC, more readily than a contractual vehicle.
- Using a corporate fund structure, such as a VCC, can facilitate better access to double taxation treaties.
- With its own legal personality and board of directors, a VCC can act as the management entity without the need to set up or engage a separate management company. Such an entity would be known as a Self- Managed

Investment Company (**SMIC**), in the case of a UCITS, or an internally managed AIF, in the case of a RIAIF or QIAIF. The obligations imposed on such entities are becoming increasingly onerous. VCCs who appoint a management company do not need to meet the operational or capital adequacy requirements which apply to management companies.

Points to note

- VCCs are subject to company law, except where requirements are specifically disapplied. For this reason, VCCs have become rare as a vehicle choice at launch. The ICAV is the accepted corporate vehicle of choice for new regulated funds.
- VCCs must hold an AGM and changes to constitutional documents require shareholder approval.
- VCCs are subject to a statutory requirement to spread risk. While the board of directors is left to determine compliance with this requirement, it is accepted that a VCC's portfolio cannot comprise of a single asset.
- Two of the directors of a VCC must be Irish resident.
- The UCITS Regulations and the Companies Act 2014 provide for the establishment of a fixed capital investment company but these are rarely used in practice and are not discussed in this note.
- Broadly, a regulated fund constituted as a VCC is exempt from tax on its income and gains on underlying investments and instead operates an exit tax on certain chargeable events (e.g. distributions to, or disposals of shares by, its non-exempt Irish resident investors). Non-Irish tax resident investors and Irish exempt resident investors are outside the scope of the exit tax regime. To the extent the VCC, or a sub-fund of an umbrella VCC, is invested 25% or more in Irish real estate, consideration needs to be given to the potential application of IREF withholding tax and exemptions therefrom.

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