

How to convert to an ICAV

Introduction

The Irish Collective Asset-management Vehicles Act 2015 (the **ICAV Act**) provides for a new corporate vehicle, the ICAV, which has been specifically tailored for the funds industry. The ICAV sits alongside the other fund structures currently available in Ireland, namely the variable capital company (**VCC**), the unit trust, the common contractual fund (**CCF**) and the investment limited partnership (**ILP**). Partners in the A&L Goodbody Asset Management & Investment Funds Unit have been closely involved in drafting this legislation.

The Central Bank of Ireland (**Central Bank**) acts as the incorporating, authorising and supervisory body for the ICAV.

Overview of the conversion of an existing Irish fund to an ICAV

The ICAV Act provides for Irish incorporated VCCs, which are authorised as either UCITS or AIFs, to convert to an ICAV by way of continuation. The process (outlined below) is relatively straightforward. It involves an application to the Central Bank together with supporting documentation, such as a director's statutory declaration, a declaration of solvency, shareholders' approval and a solicitor's declaration. There is no provision contained in the ICAV Act for the conversion of an ICAV back to a VCC.

Capacity to convert an existing Irish VCC to an ICAV

Conversion requires an enabling provision in the articles of association of the converting VCC as well as shareholder approval for the conversion itself. Where it is necessary to pass a resolution to insert the enabling provision into the articles of association of the converting VCC, it may be prudent to run this process in tandem with seeking shareholder approval to the conversion itself (and, in turn, this may be timed to coincide with the AGM of the VCC).

Documentation to be submitted to the Central Bank

The ICAV Act provides that the following should be submitted to the Central Bank:

- An application form together with:
 - the VCC's certificate of incorporation;
 - the memorandum and articles of association of the VCC;
 - the instrument of incorporation (**IOI**) in respect of the proposed ICAV;
 - a list setting out particulars of registered office, directors and secretary;
 - a statutory declaration made by a director of the VCC to the effect that:
- no petition or other similar proceedings to wind up or liquidate the VCC has been notified to it and remain outstanding in any place, and no order has been notified to it, or resolution adopted by it, to wind up or liquidate the VCC in any place,
- the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the VCC and, at the date of the declaration, no such person is acting in that capacity in

any place with respect to the VCC, or its property or any part of its property,

- the VCC is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the VCC with creditors in any place,
- the conversion is permitted by and has been approved in accordance with the memorandum and articles of association of the VCC; and
- any consent or approval to the proposed conversion required by any contract entered into or undertaking given by the VCC has been obtained or varied;
 - a declaration of solvency (sworn by a director of the VCC and attaching an independent person's report);
 - a schedule of charges or security interests created or granted by the VCC (showing their priority); and
 - notification of the proposed name of the ICAV (if different from its existing name).
- a statutory declaration made by a director or solicitor to the VCC that the above requirements have been complied with.

Instrument of Incorporation

Pursuant to the ICAV Act, the IOI must provide for the following:

- 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 is 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 shareholder, 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 and subject to such requirements as may be imposed by the Central Bank. This carve-out will facilitate the use of the ICAV for closed-ended funds;
- the share capital of the ICAV is equal to the value for the time being of the issued share capital of the ICAV; and
- the share capital is divided into a specified number of shares without assigning any nominal value to them.

Directors

A minimum of two directors are required and a body corporate may not act as director of an ICAV. The requirements and obligations for directors under the ICAV Act essentially mirror those under the Irish Companies Act, 2014 (which will come into force on 1 June 2015). The directors will be subject to the Central Bank's fitness and probity requirements as part of the fund authorisation process. ICAVs will also be expected to adopt the Irish Funds Industry Association's corporate governance code.

Central Bank Process and Conversion

The Central Bank must be satisfied with the application itself, that any proposed name is not undesirable, and that the VCC is authorised by

the Central Bank as a collective investment undertaking.

If the application is in order, the Central Bank will issue a certificate of registration of the VCC as an ICAV and enter in the ICAV register the details of any charges and securities interests of the VCC. The Central Bank will also publish a notice in the Irish Companies Registration Office Gazette.

Once the VCC has been registered as an ICAV it must itself apply to be de-registered from the Companies Registration Office. The Registrar of Companies will then issue a certificate of de-registration, arrange for the Companies Registration Office to update the Register of Companies and publish in the Irish Companies Registration Office Gazette the date of the ICAV's registration as an ICAV and the previous name of the ICAV (if different from the name of the VCC).

Effect of Conversion

From the date of registration, the VCC is deemed to be an ICAV formed and registered under the ICAV Act and the provisions of the ICAV Act apply to it. The ICAV Act does not operate to:

- prejudice or affect the identity or continuity of the ICAV as previously established and registered for the period for which it was established and registered in Ireland as a VCC;
- affect any contract made, resolution passed or any other act or thing done in relation to the ICAV during the period that it was so established and registered as a VCC;
- affect the rights, authorities, functions and liabilities or obligations of the ICAV or any other person; or
- render defective any legal proceedings by or against the ICAV.

Because the conversion to an ICAV is stated not to affect the identity or continuity of the entity, it is, effectively, a conversion by way of continuation. As there is no change in the legal entity, investors continue to hold shares in the same entity. Accordingly:

- the fund can continue its track record;
- the conversion should not be a chargeable event for tax purposes for existing shareholders and (subject to the advice of the depository) should not require any re-registration of the assets of the fund;
- the ICAV Act specifies that registration as an ICAV will not impact the VCC's existing authorisation status under Part XIII of the Companies Acts for AIFs or under the UCITS Regulations for UCITS;
- fund documentation (such as the offering document, contracts with service providers, business plan or programme of activity and KIIDs (if applicable)) will need to be reviewed and may need updating to comply with the Central Bank's requirements for ICAVs. Some notifications and updated filings will be required.

No requirement to convert an existing fund to an ICAV

Existing funds will not be affected by the ICAV Act. We anticipate, however, that the ICAV will become the vehicle of choice for UCITS and AIFs and that, over time, many existing VCCs are likely to convert to ICAVs in order to avail of the benefits detailed above.

How A&L Goodbody can help you

The Asset Management & Investment Funds Unit in A&L Goodbody has been closely involved in drafting this legislation. We can guide and take you through the Irish legal and regulatory process and share with you our experience in dealing with the practical and operational issues that arise along the way.

KEY CONTACTS



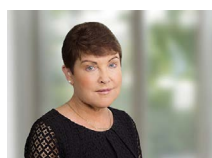
Brian McDermott
Partner and Head of Asset Management & Investment Funds
+353 1 649 2307
bmcdermott@algoodbody.com



Michael Barr
Partner
+353 1 649 2327
mbarr@algoodbody.com



Stephen Carson
Partner
+44 20 7382 0820
scarson@algoodbody.com



Mary McKenna
Partner
+353 1 649 2344
mmckenna@algoodbody.com



Nollaig Greene
Knowledge Lawyer
+353 1 649 2359
ngreene@algoodbody.com



James Somerville
Partner
+353 1 649 2340
jsomerville@algoodbody.com

The contents of this note are necessarily expressed in broad terms and limited to general information rather than detailed analyses or legal advice. Specialist professional advice should always be obtained to address legal and other issues arising in specific contexts.

© A&L Goodbody - March 2015