Why choose 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.

Key advantages of an ICAV

- The ICAV benefits from being subject to a separate and distinct corporate governance regime which has been drafted specifically for use by the funds industry. As such, the ICAV is not subject to a number of the general Irish and European company law requirements which are applicable to VCCs by virtue of their incorporation under the Irish Companies Acts, but which are generally more appropriate to trading companies than fund vehicles. The ICAV represents a simpler and more cost effective choice of corporate vehicle for funds. This should also "future proof" the ICAV against future changes in Irish and European company law.
- The ICAV is able to elect its classification under the US 'check-the-box' taxation rules (which is of particular interest to managers of funds targeting US investors). This allows an ICAV to be treated as a partnership for US tax purposes and thereby avoid certain adverse tax consequences for US taxable investors. This is in contrast to the status of the VCC which is unable to 'check-the-box' for US tax purposes, and gives 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'.

ICAVs may be authorised as either alternative investment funds (**AIF**s) or as undertakings for collective investment in transferable securities (**UCITS**). They may be self-managed (or internally managed) or have an external manager.

- ICAVs may be authorised as stand-alone or umbrella structures.
- Umbrella ICAVs have segregated liability between sub-funds.
- ICAVs established as AIFs may issue partly paid shares.
- ICAVs can be structured as open-ended, closed-ended or limited liquidity funds.
- ICAVs may list on the Irish Stock Exchange (**ISE**) by following the normal listing process for Irish domiciled funds without any additional requirements.
- Umbrella ICAVs may prepare separate accounts with different year-ends in respect of each sub-fund. It will not be necessary for the ICAV to produce consolidated accounts as a VCC is currently obliged to do. This provides added flexibility and may reduce costs. The requirements for the preparation of financial statements for an ICAV follow the UCITS or AIF requirements (as the case may be) and additional requirements are not prescribed. The ICAV enjoys flexibility as to which accounting standards to adopt in the preparation of its financial statements.
- ICAVs may dispense with the ability to hold an annual general meeting (**AGM**) by giving at least sixty days prior written notice to all of the ICAV's shareholders.
- There will be no requirement to obtain prior investor approval where changes are sought to the instrument of incorporation (**IOI**), provided the ICAV's depositary can certify that the changes do not prejudice the interests of investors.
- ICAVs are not subject to risk spreading/diversification requirements which currently apply to VCCs under Irish company law. This is of interest to QIAIFs which are already subject to AIFMD risk management policy requirements.
- Existing funds established as investment companies may convert to ICAV status by way of continuation without impacting their regulatory or Irish taxation status, and without interrupting their performance record. Please see our How to convert to an ICAV document (which is available on our website) for more detail.
- Existing funds domiciled outside of Ireland into Ireland may migrate (i.e. re-domicile) to Ireland as ICAVs by way of continuation and so avoid interrupting their performance record.

Incorporation, Conversion, Re-Domiciliation (Migration) and Merger

The ICAV Act sets out simple, streamlined and fairly straight forward procedures (which are based on existing tried and tested procedures) for:

- the incorporation of an ICAV (Please see our How to incorporate an ICAV document which is available on our website) for more detail;
- the conversion of an existing Irish corporate vehicle established under the Irish Companies Acts to an ICAV;
- the re-domiciliation (or migration) of an existing non-Irish fund to Ireland as an ICAV; and
- a merger involving an ICAV as the receiving fund.

Role of the Central Bank

The Central Bank acts not only as regulator for ICAVs, but also as the incorporating, authorising and reporting body for ICAVs.

Key advantages of locating in Ireland

Ireland is widely regarded as the jurisdiction of choice for asset managers seeking to establish regulated fund products for global distribution. Advantages of locating in Ireland include:

- a well-established and respected legal and regulatory framework, and a co-operative regulator in the Central Bank;
- broad experience and expertise in alternative funds – many hedge fund managers are looking to run their strategies within a UCITS product;

- availability of the UCITS and AIFMD pan-European passports;
- a strong and proactive funds industry representative body in the Irish Funds Industry Association;
- a skilled specialist workforce of administration and custody providers, legal and tax advisors, auditors and consultants;
- a favourable tax regime for Irish domiciled funds, and an extensive network of double tax treaties; and
- a broad product range of fund categories and legal structures in Ireland which provide flexibility in investment options.

Conclusion

The ICAV Act 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.

The drafting of the legislation has been a funds industry-led process, with regulators and other stakeholders consulted throughout.

The introduction of the ICAV represents an innovative and significant development for the Irish funds industry and will reinforce Ireland's reputation as a domicile of excellence for the establishment and operation of investment funds.

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 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.

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