

# Irish Collective Asset - Management Vehicles (ICAV)

## Introduction

The Irish Collective Asset-management Vehicles Act 2015 (the ICAV Act) provides for a new corporate structure which is tailored to the needs of the global funds industry and has a number of advantages over existing forms of investment vehicle.

## History

The IFSC Strategy Statement 2011-2016 committed 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 an ICAV may be closed-ended) and the SICAV that is used in other European jurisdictions.

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 are not 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 was to create a separate and distinct corporate fund regime that would 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 will 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 is the incorporating, authorising and supervisory authority for ICAVs.
- The ICAV has a governing document called an “Instrument of Incorporation” (IOI). The IOI is the constitutional document of the ICAV, similar to the Memorandum and Articles of Association of a PLC.

- An ICAV has its own legislative regime. It does not have the status of a “company”, which by definition is established under the Irish Companies Acts. It is therefore not 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. This should also “future proof” against future changes in Irish and European company law.
- In the case of changes to the IOI there is 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. Investors liability is limited to the amount, if any, unpaid on their shares. An open-ended ICAV may issue and redeem shares continually according to investor demand, as is the case with existing forms of open-ended fund. Sub-funds do not have separate legal personality but in certain circumstances may behave as if they do.
- Umbrella ICAVs have segregated liability between sub-funds.
- 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 may dispense with the holding of an annual general meeting by giving at least 60 days written notice to investors.
- ICAVs may be 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 may produce their own sub-fund-by-sub-fund accounts (with different year ends), and preparation of financial statements for an ICAV (and/or its sub-funds) are governed by the requirements for UCITS or AIFs. This contrasts with the regime for funds established under the Irish Companies Acts which must produce one consolidated set of financial statements.
- Existing funds established as PLCs under Part XIII of the Companies Act 1990 have the option to convert to ICAVs. However, there is no provision within the legislation to re-convert an ICAV to a PLC.
- Provision has been made for the migration of funds domiciled outside of Ireland into Ireland as ICAVs by continuation.
- An ICAV is required (as is the case for all Irish funds) to be authorised either as a UCITS or an AIF before commencing to operate.

## Incorporation, Conversion, Re-domiciliation (migration) and Merger

The ICAV Act sets out a simple, streamlined and fairly straight forward procedure for:

- the incorporation of an ICAV;
- 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.

## 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 players 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.

## KEY CONTACTS



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