The ICAV: New opportunities

By Brian McDermott & Nessa Joyce

Ireland took a significant step closer to paving the way for the establishment of the Irish collective asset-management vehicle (the ICAV) with the publication of the ICAV Bill on 29 July this year, the early enactment of which has been cited as a priority for the Irish Government.

The Central Bank of Ireland, which will act as both the authorising and regulating body for the ICAV, has indicated that it will be ready to process applications for ICAVs within two weeks of the enactment of the legislation.

The ICAV will sit alongside the available legal structures in Ireland for funds, being the variable capital company (VCC), the unit trust, the common contractual fund and the investment limited partnership. Notably, the ICAV Bill provides for the authorisation of ICAVs as either alternative investment funds (AIFs) under the ICAV Act (once enacted) or as undertakings for collective investment in transferable securities (UCITS) under the UCITS Regulations and so a manager's decision on the most appropriate fund structure to utilise will not be limited by their choice of legal structure.

In practice, the ICAV will most closely resemble the VCC. Unlike the VCC which is governed by the Irish Companies Acts, the ICAV will benefit from being subject to a separate and distinct corporate fund regime which has been drafted specifically for use by the funds industry. As such, the ICAV will not be subject to a number of the general Irish and European company law requirements which are applicable to VCCs but are generally more appropriate to trading companies. The ICAV should, accordingly, represent a simpler and more cost effective choice of corporate vehicle for funds.

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Additionally, the ICAV will be able to elect its 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 VCC which is not able to 'check-the-box' for US tax purposes. This 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'.

While the ICAV Bill has yet to be enacted and so is subject to further amendment, we do now have proposed high level processes for (i) registering as an ICAV, (ii) converting an existing VCC to an ICAV, (iii) migrating a fund from a prescribed jurisdiction and registering it as an ICAV by way of continuation, and (iv) merging ICAVs.

The publication of the ICAV Bill is heralded as a significant step, not only because of the importance of providing for the establishment of a new vehicle with such key benefits, but also in light of its timing in a year during which we saw the deadline for compliance with the Alternative Investment Fund Managers Directive come and go. The publication of the ICAV Bill in such circumstances strongly signifies the government's commitment to constantly striving to enhance and develop the investment funds regime so as to reinforce Ireland's reputation as a domicile of excellence for the establishment and operation of investment funds. ■