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# *The ICAV*

## The Irish Collective Asset Management Vehicle



A&L Goodbody



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# *Agenda*

- ICAV v PLC
- How to set up an ICAV
- Converting to the ICAV
- Redomiciliation

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## *Your Panel*

### **Moderator**

Ken Owens                      Partner, PwC

### **Panel**

Ilona McElroy                Senior Manager, PwC

Liam O'Mahony              Senior Manager, PwC

Elaine Keane                 Partner, A&L Goodbody

Michael Barr                 Partner, A&L Goodbody

# *The Irish funds industry*

By the numbers in 2014

*AUM of Irish domiciled*

**€1,661 billion**

@ 31 December 2014

*Growth of* **24%** *in 2014*

*UCITS net sales in 2014*

**€387 billion**

@ 31 December 2014

*Growth of* **29%** *in 2014*

*UCITS AUM*

**€1,274 billion**

@ 31 December 2014

*Growth of* **22%** *in 2014*

*Irish UCITS*

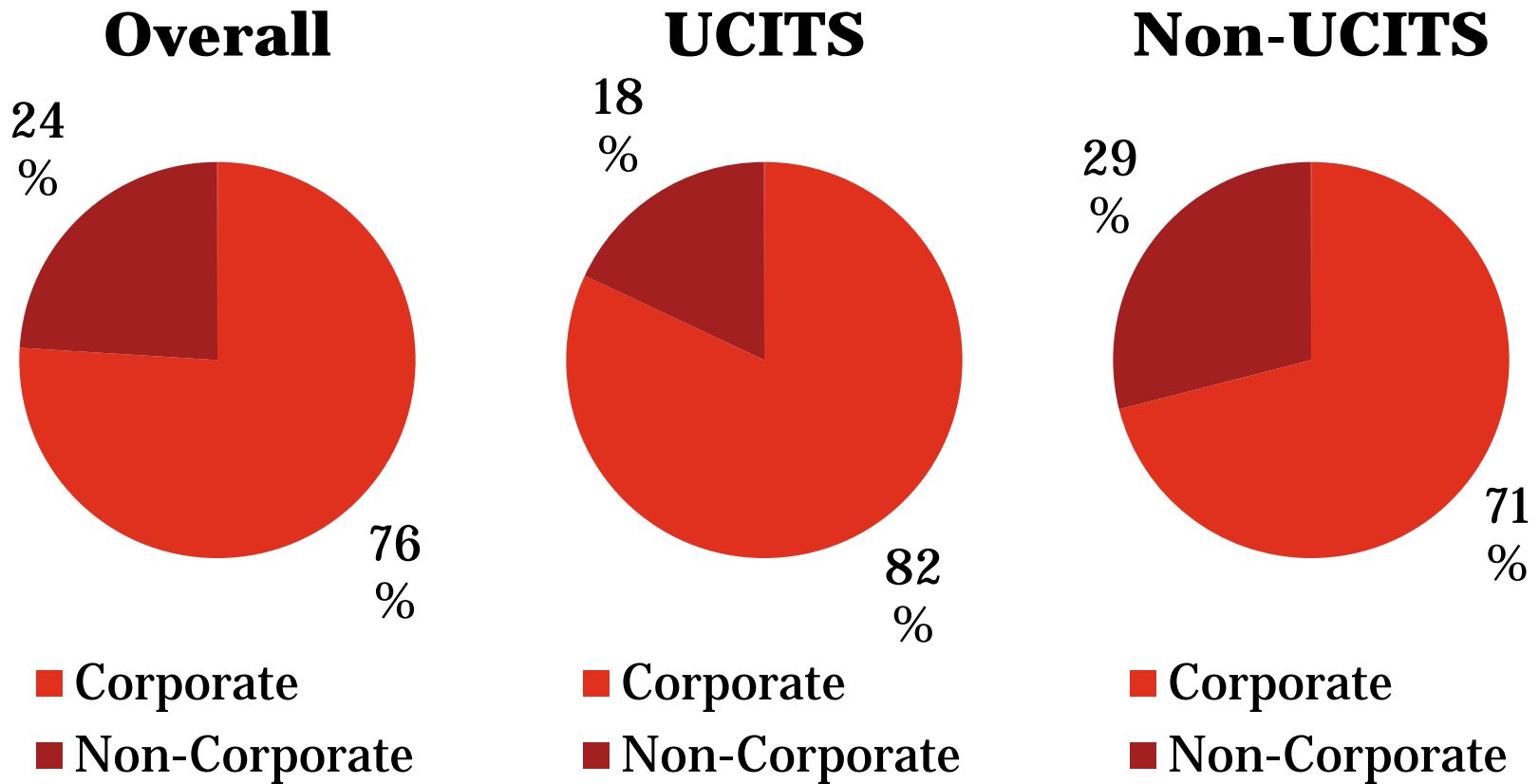
*accounted*

*for*

**24.1%**

*of all UCITS sales* in 2014

# *The PLC is the most popular fund structure*

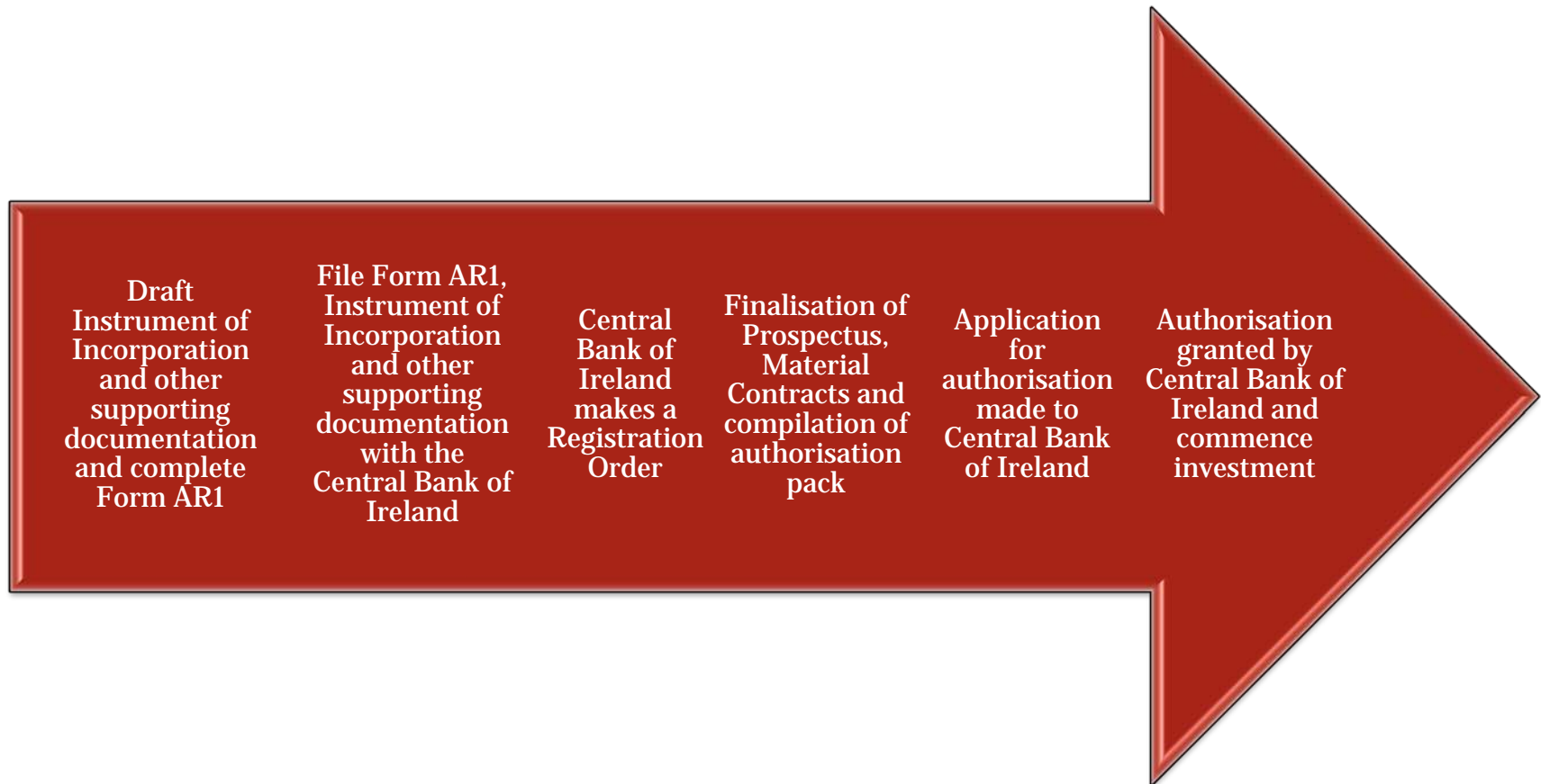


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## *How does an ICAV compare with a PLC?*

- Similar look and feel to existing PLC structure
- Requires a minimum of two directors and a corporate secretary
- Instrument of Incorporation
- May be authorised as an umbrella structure or a stand-alone structure
- No interaction with the Companies Registration Office
- ICAV is not a company for the purpose of Irish company law

# *Legal and Regulatory steps involved in set-up of an ICAV*



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# *Benefits of an ICAV from a taxation perspective*

## **Irish Tax**

- ICAV subject to existing Irish tax regime for regulated funds

## **US Tax**

### **1. Treatment of a plc**

- Cannot “check the box” to be treated as transparent
- 2 levels of tax from a US perspective: (i) at fund level and, (ii) at investor level (on a distribution)
- Can be treated as a PFIC

### **2. Treatment of an ICAV**

- ICAV can elect for US tax purposes to be treated as tax transparent
- Benefit of underlying classification
- Benefit of tax credit for WHT suffered by the fund
- Benefit of losses suffered by the fund
- Elimination of US WHT on payments to fund to extent of US investors



## *Benefits of an ICAV?*

<b>Distinguishing features</b>	<b>ICAV</b>	<b>PLC</b>
Availability to 'check-the box' for US taxation purposes	✓	×
Required to have the aim of spreading investment risk	×	✓
Shareholder approval required for all changes to constitutional document	×	✓
May dispense with requirement to hold annual general meetings	✓	×
Accounts can be drawn up at sub-fund level	✓	×
Requirement to have minimum of 2 directors	✓	✓
Filing with Companies Registrations Office	×	✓
Ability to have Umbrella structure and/or Stand-alone structure	✓	✓
UCITS / AIF compliant structure	✓	✓

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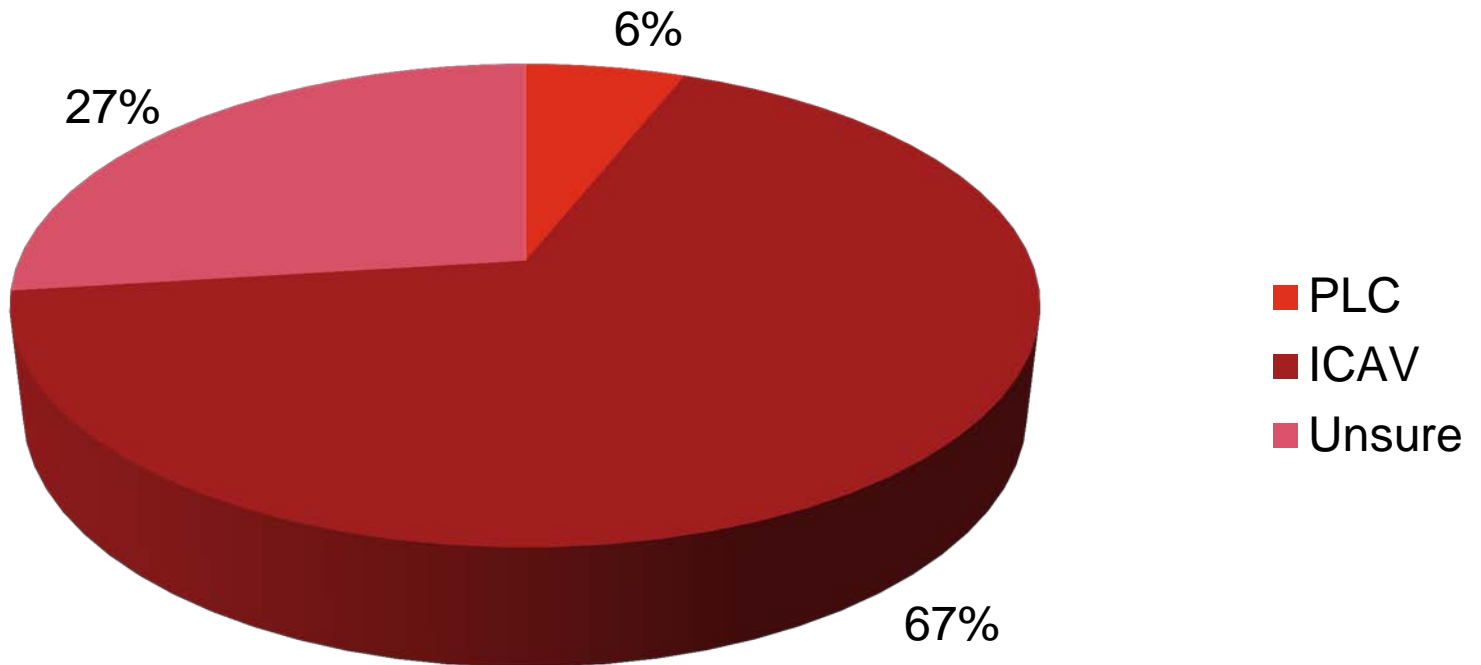
## *Benefits of an ICAV from a financial reporting perspective*

- Possible for ICAV to prepare accounts on a sub-fund basis
- Governing requirements for preparation of FS will follow UCITS/AIF requirements
- Flexibility in accounting standards – Irish, UK, USA, IFRS, Japanese and Canadian

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*If you were to establish a new fund in Ireland would you establish it as a PLC or an ICAV?*

**1st Audience Poll Result**



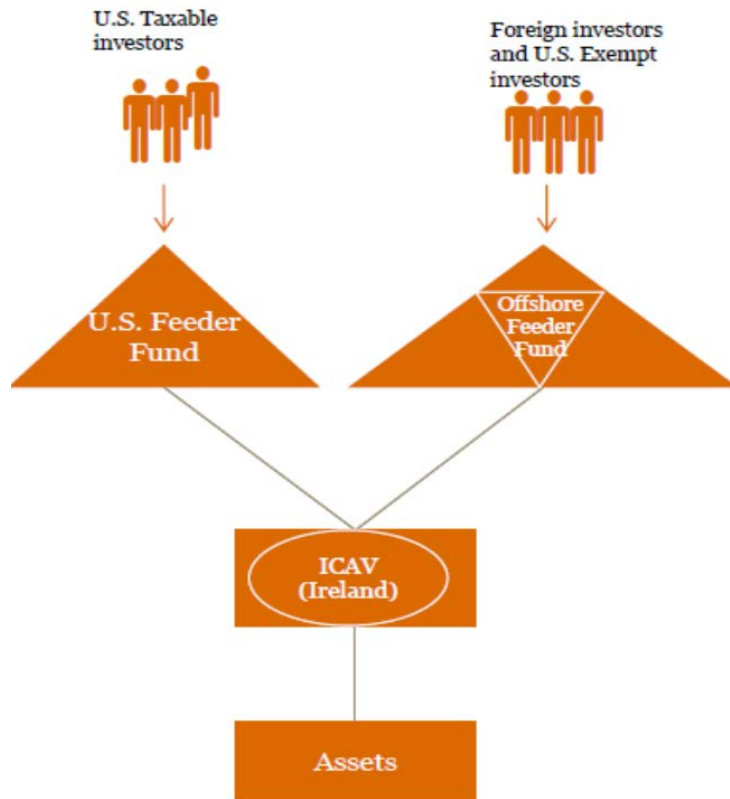
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## *What is the conversion process and the legal/regulatory steps needed?*

Insert a provision in the Articles of Association allowing for conversion

- Obtain shareholder approval (75% of votes cast)
- Statutory declaration from a Director (as to solvency, conversion permitted by M&A and confirmation that any approvals needed have been obtained)
- Statutory declaration from a Director or solicitor as to compliance with the ICAV Act.
- Declaration of solvency from one director
- Filings with the Central Bank
- Existing authorisations (e.g. as a UCITS or a QIAIF or an internally managed AIF) carry over
- Ability to carry over past performance

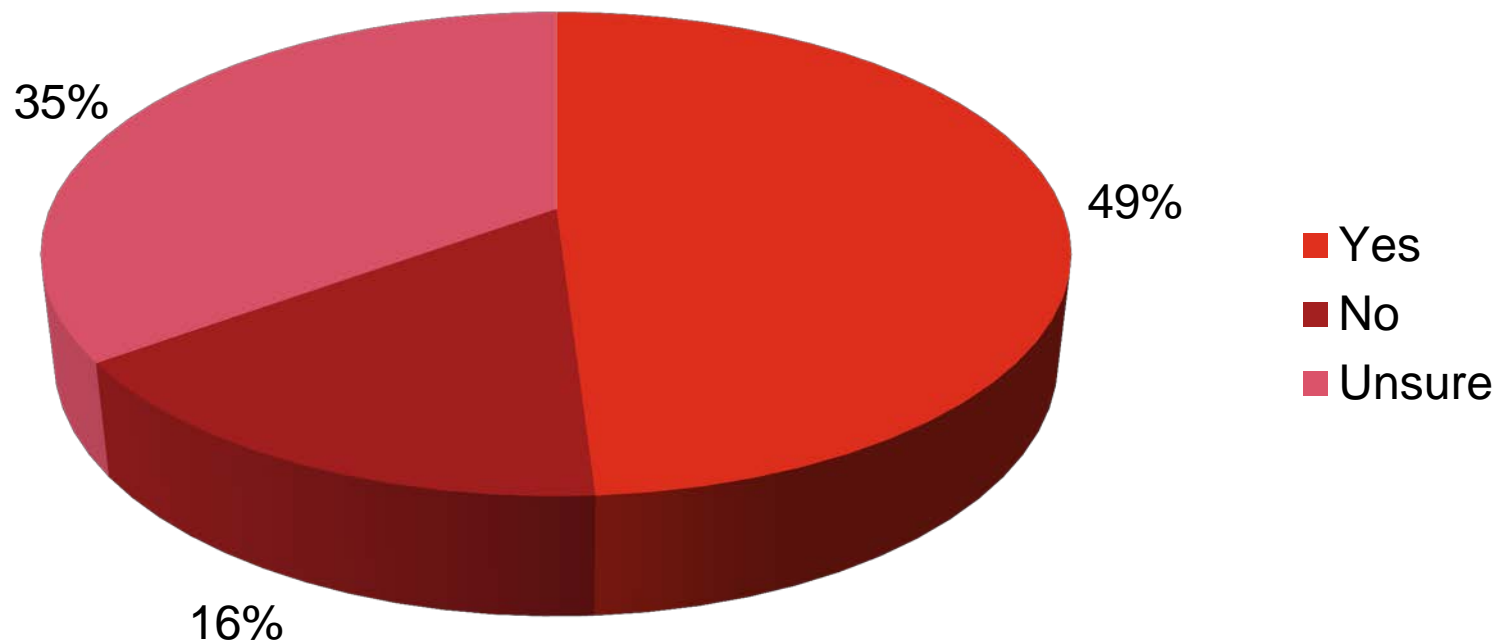
# Conversion – tax issues



- Fund taxation
- Portfolio issues
- Non-US investors
- US taxable investors

*Based on what you have heard, would you expect to see a lot of existing investment companies converting to take advantage of the ICAV structure?*

### 2nd Audience Poll Result



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## *Are there additional considerations/issues involved in converting a unit trust to an ICAV*

- No statutory basis as such as a unit trust is not a separate legal person
- Process would be similar to current merger process
- Set up an ICAV and merge sub-funds of the unit trust into sub-funds of the ICAV
- Then terminate the unit trust
- Ultimately, there is a bit more to it but it is possible

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## *Redomiciliation – procedures and practical considerations*

- Three step process
  1. Results in creation of ICAV structure in Ireland;
  2. Implementation of appropriate steps under the legal and regulatory regime in existing fund's home state (for example, obtaining shareholder approval for redomiciliation); and
  3. Completion of documentation and filing for authorisation with the Central Bank of Ireland.



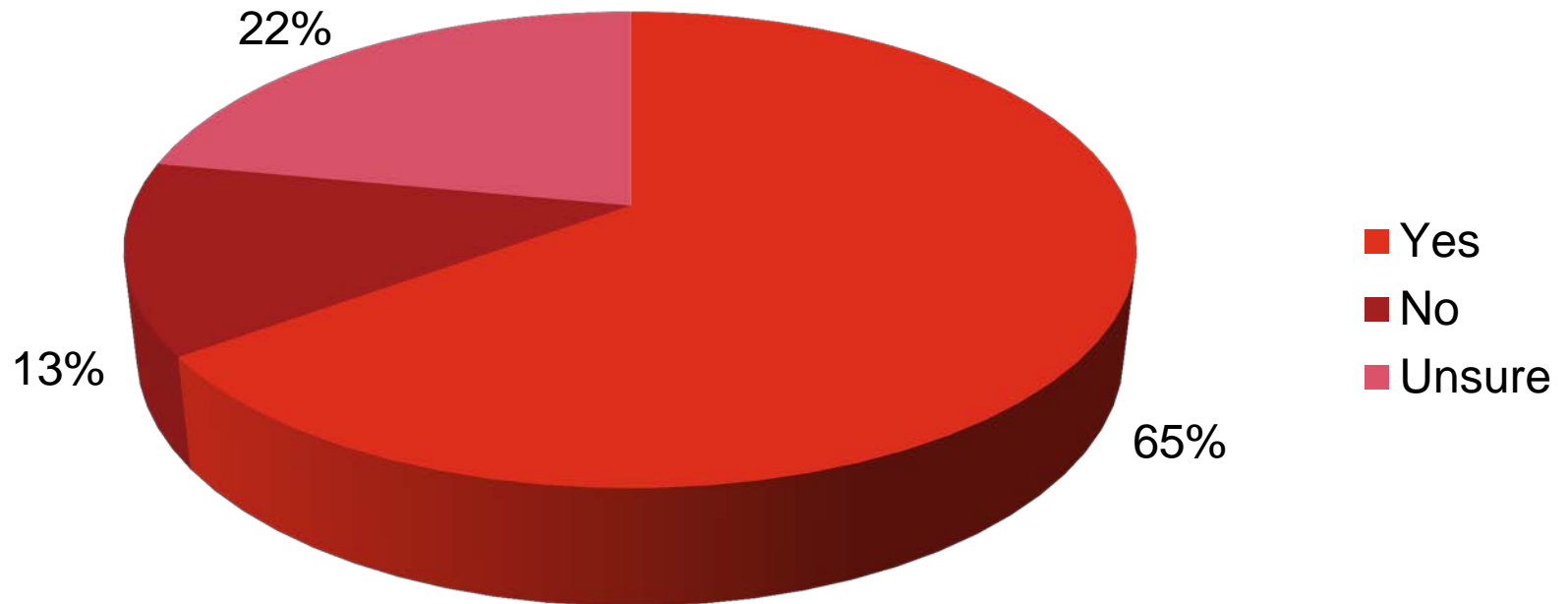
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## *Redomiciliation – tax issues*

- Fund taxation
- Portfolio issues
- Non-US investors
- US Investors

*Would you expect to see an increase in the number of redomiciliations to Ireland in light of the availability of the ICAV?*

### 3rd Audience Poll Result



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# Q&A

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## *5 Key thoughts from our webinar*

1. We expect the ICAV to replace the investment company or plc structure as the corporate vehicle of choice for investment funds in Ireland;
2. The ICAV is a tailor made solution for the investment funds industry;
3. The ICAV is administratively less burdensome than the plc structure saving users time and money;
4. The ICAV can “check the box” from a US tax perspective; and
5. It’s live! Registrations are already being accepted by the Central Bank of Ireland.

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*Thanks for joining us.*

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