

How to incorporate an ICAV

Introduction

The legislation which provides for the establishment of the Irish Collective Asset-management Vehicle (the **ICAV**) has now been signed into law as the ICAV Act 2015 (the **ICAV Act**) and is expected to be commenced soon. Partners in the A&L Goodbody Asset Management and Investment Funds Unit have been closely involved in drafting this legislation.

The ICAV is a new form of corporate vehicle 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**).

The Central Bank of Ireland (**Central Bank**) acts as the incorporating, authorising and regulating body for the ICAV. The ICAV will also be required (as is currently the case for all Irish funds) to apply to the Central Bank for authorisation, either as a UCITS or an AIF, before commencing to operate.

Overview of the incorporation process

The application to the Central Bank to incorporate as an ICAV will resemble the incorporation application to the Companies Registration Office for a VCC. The application will include the Instrument of Incorporation (**IOI**) which will be the constitutional document of the ICAV. The IOI must be drafted in compliance with specified requirements (detailed below). It will largely resemble the memorandum and articles of association of authorised VCCs.

Timescale

The Central Bank has not yet set a timeline for the processing of ICAV registration applications. It generally takes up to two weeks to incorporate a VCC and, given the comparability of the two processes, a similar turnaround time may be anticipated for ICAV registrations.

Documentation to be filed with the Central Bank

The ICAV Act provides that an ICAV must submit a written application for registration to the Central Bank which contains the following information on the proposed ICAV:

- its IOI, which must provide for various matters as detailed below;
- a statement signed by the subscribers to the IOI (at least two), setting out details of the name of the ICAV, first directors (at least two) and secretary (with their signed consent to act), the addresses of the head office and registered office of the ICAV (these may be the same and must be in Ireland);
- a fee (not yet prescribed);
- a solicitor's certificate that the IOI complies with the ICAV Act, and any requirements imposed by or under the ICAV Act or any other enactment in relation to the contents of the IOI; and
- any other information the Central Bank may specify. The Central Bank may also require information to be certified or attested as to its authenticity or correctness, including by statutory declaration.

Instrument of Incorporation (IOI)

The ICAV Act provides that 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. ICAVs will also be expected to adopt the Irish Funds Industry Association's corporate governance code.

Incorporation

The Central Bank will, once satisfied with the application, make a registration order in respect of the ICAV and notify the applicant of the order specifying the date of registration. The registration order issued by the Central Bank effects the incorporation of the ICAV.

As stated above, an ICAV which has been incorporated by the Central Bank will not be permitted to carry on business unless it has also been authorised by the Central Bank. The precise authorisation process will depend on whether the ICAV is to be authorised as an AIF or a UCITS.

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.

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