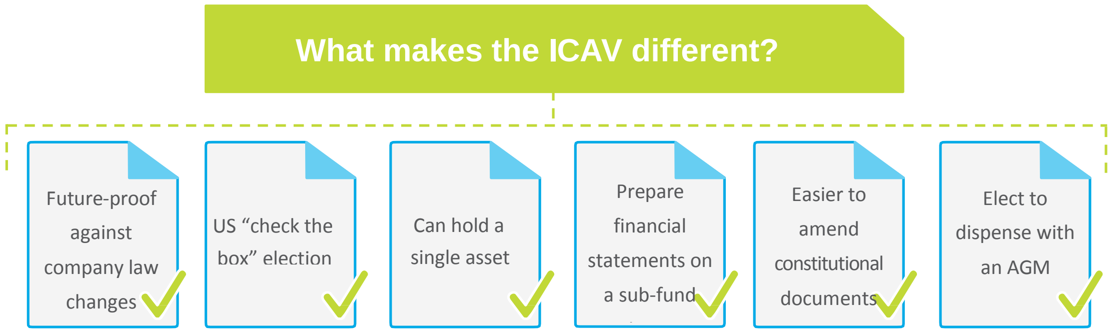
ICAV
Irish Collective Asset- management Vehicle

Leading business advisers

Ireland's new corporate fund vehicle offers enhanced distribution and a simplified compliance model. The ICAV is being introduced by the Irish Collective Asset-management Vehicles Act 2015 (the "ICAV Act"), which is tailor-made for investment funds resulting in a more efficient and effective fund structure. It was passed by the Irish Parliament on 19 February 2015 and is expected to be signed by the Irish President within days.



Benefits of the ICAV

As a vehicle designed specifically for the funds industry, the ICAV combines the advantages of each of the existing fund vehicles into one, offering many benefits to investors and promoters.

The main benefits of the ICAV are its flexibility (as can be seen from the table above), its "check the box" feature for US tax purposes and its simplified compliance.

A key benefit of the ICAV is that it is optional. Therefore existing structures are not obliged to change and will only do so if the cost-benefit is favourable.

Distribution

The ICAV qualifies for the "check the box" election under US tax rules to be treated as a transparent or flow-through entity for US federal income tax purposes. This means that any US investor is placed in the same tax position as if they had invested directly in the underlying investments of the ICAV. This status makes the ICAV particularly attractive for US investors seeking tax efficient returns from a regulated corporate fund vehicle.

Historically, VCCs were the only corporate fund structure available in Ireland. While this structure served the industry well, it must be treated as a "per se" corporation for US tax purposes, rather than as a transparent investment structure. This classification can sometimes lead to tax leakage for US investors investing through Irish fund structures, essentially resulting in the investor being charged tax twice (at fund level and at investor level).

Funds currently structured as VCCs which do not currently benefit from this election should consider converting to an ICAV to increase attractiveness to US investors.

If you are intending to "check the box" on the ICAV, (whether setting up a new ICAV or converting a VCC to an ICAV), we strongly recommend you get US tax advice in advance. The implications of "checking the box" need to be considered from a US tax and FATCA perspective. For example, matters such as whether you can "check" the fund or subfunds; whether there are US tax filing implications for non US investors all need advance consideration.

Simplification

The ICAV delivers simplified compliance, including:

» A stream-lined incorporation and authorisation process, as both steps are carried out simultaneously by the Central Bank of Ireland ("CBI") rather than registration first with the Companies Registration Office ("CRO") followed by CBI authorisation.

» The Board of Directors may elect to dispense with the need for an AGM by notifying shareholders.

» Amendments to the ICAV's constitutional documents are possible without shareholder approval where the depositary certifies that the changes do not prejudice the interests of investors

» Creating a corporate vehicle outside the Companies Acts also future-proofs the ICAV against any unintended consequences arising from changes to Irish and European company law.

» The ICAV allows a streamlined compliance procedure: instead of notifying both the CRO and the CBI of material changes (including changes to directors), the ICAV need only inform the CBI.

HIGHLIGHT: Ireland has long been one of the power- houses of the global fund industry, with Irish domiciled funds being distributed into approximately 70 countries worldwide.

Irish fund vehicles compared

Ireland already offers several vehicles for fund structuring purposes which have been the bedrock of Ireland's hugely successful funds industry to date. The ICAV is Ireland's first bespoke corporate funds vehicle, designed to offer the most attractive features of each of the existing structures. The new ICAV structure runs parallel to, rather than replaces, existing fund structures. Therefore managers and boards should consider the benefits of converting, but do not have any obligation to change from their existing structure.

The ICAV is expected to be the vehicle of choice when setting up Irish fund structures in the future. To date, the variable capital company ("VCC") and the unit trust have been the most popular structures, while funds have only been established as investment limited partnerships or common contractual funds in certain circumstances.

	Investment limited partnership	Unit trust	Common contractual fund	Variable capital company	ICAV
Eligible for US 'check the box'	✓	✓	✓	×	✓
Umbrella sub-funds	✓	✓	✓	✓	✓
Financial statements on a sub-fund basis	×	✓	✓	×	✓
Irish tax transparency	✓	×	✓	×	×
Requirement for AGM	Not required	Not required	Not required	Always required	Can be dispensed with
Amending constitutional documents	Requires investor approval	Requires trustee certification*	Requires custodian / manager approval*	Requires investor approval	Requires depositary certification*
AIF/UCITS	AIF only	✓	✓	✓	✓
Open-ended	✓	✓	✓	✓	✓
Closed-ended	✓	✓	✓	✓	✓
Risk spreading	Not required	Not required	Not required	Required	Not required

*Changes permitted once the relevant party certifies that a change does not prejudice investors' interests.

Existing VCCs have the option of converting to an ICAV and overseas investment companies have the option of redomiciling to Ireland as an ICAV, as outlined below. We recommend that managers and boards should consider conducting a cost-benefit analysis to determine whether the potential savings on compliance costs and the increased distribution opportunities offered by the ICAV would justify any costs and effort required to complete a conversion.

HIGHLIGHT: The ICAV is expected to increase Ireland's attractiveness as a fund domicile and to increase Ireland's share of the global funds industry.

Conversion/migration to an ICAV

Existing VCCs (including UCITS corporate funds) can convert to an ICAV through a stream-lined conversion process.

Overseas investment companies can also convert to an ICAV under a streamlined one-step re-domiciliation migration process, rather than being required to migrate and then convert.

Key here is that the conversion process aims to continue the track record and existence of the converting fund, rather than launching a new fund with a new identity. It allows a fund to maintain its past performance data by changing the seat of incorporation rather than starting anew. This avoids the need for any contracts to be re-executed.

Conversion and migration is available for both UCITS and AIFs structured as corporate entities.

Once registered with the CBI, the new ICAV must de-register from either the CRO in Ireland or its equivalent overseas, with effect from its date of registration as an ICAV by the CBI.

Fund Mergers

An ICAV authorised under the Irish UCITS Regulations may merge with any other UCITS, in accordance with those Regulations. An ICAV authorised under the ICAV Act (i.e., an ICAV-AIF) may merge with any other form of collective investment scheme in accordance with any conditions imposed by the CBI.

Given this wording in the legislation, it is possible that the CBI will issue guidance in the AIF Rulebook regarding ICAV mergers with AIFs and potentially also with UCITS. .

Look before you leap

It is anticipated that the ICAV will be the vehicle of choice for the vast majority of new fund launches in Ireland and will therefore replace the VCC over time. However, before converting from your existing structure to an ICAV, it is critical to carry out a cost-benefit analysis to determine whether the estimated benefits will outweigh the costs and effort required to complete a conversion. These conversion costs include drafting the instrument of incorporation, completing the filings with the CBI, de-registering from the CRO and notifying shareholders.

It is also important to consider certain tax, legal and investor considerations as set out below.

Tax

» Have your US tax advisors reviewed your proposed ICAV structure to ensure they are satisfied that any sub-funds are suitable for “check the box” election and meet your US tax objectives?

» Will “checking the box” trigger any adverse tax consequences for US investors who currently treat the investment as “opaque”?

» Liaise with your tax advisors on foreign tax reporting to understand if any considerations need to be addressed (e.g. German, UK, Swiss tax reporting)

» Is the same Investment Undertaking Tax (IUT) number still appropriate?

» Will the non-residency fund tax declarations remain intact for the new ICAV (as the forms are in the name of the VCC)?

» Will the nature of the changes give rise to any unintended disposal or other tax implications for existing investors?

» Is the service provider to the fund able to perform the required reporting for US investors if the “check the box” option is utilised?

HIGHLIGHT: There are 5,833 funds domiciled in Ireland, comprising 3,571 UCITS funds.

HIGHLIGHT: Ireland’s domiciled assets under administration at the end of December 2014 were approximately €1.6 trillion. Assets administered in Ireland are approximately €3.2 trillion.

Legal

What does your entity need to do to convert or migrate? It is likely that approval will be required from the board, as well as and from shareholders at an extraordinary general meeting.

New documents will need to be drafted and filed with the CBI, including:

» an instrument of incorporation in place of the existing memorandum and articles of incorporation (or equivalent);

» a declaration of solvency; and

» a statutory declaration by a director confirming certain matters.

Investors

» Before taking steps to begin the conversion process, engage with investors to ensure that there are no unintended consequences for the investor that could negatively impact their performance and therefore jeopardise existing or future investments.

HIGHLIGHT: Ireland recently overtook France to be the second largest fund domicile in Europe.

Conclusion

As a tailor made vehicle designed to cater for the needs of investment funds, the ICAV will be the vehicle of choice for future Irish fund launches. We also expect to see a significant number of existing fund structures convert to take advantage of increased efficiencies and greater access to US investors.

How can we help?

Our ICAV experts are ideally placed to:

» Perform a cost-benefit analysis for your existing fund structure.

» Advise on all tax considerations of conversion/migration.

» Assist you with converting/migrating existing structures or establishing newer structures.

If you would like assistance or further information on any of the matters outlined above, please feel free to contact any of the individuals listed below.

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