

Conversion of an Irish Investment Company to an ICAV

General Introduction and Background

The Irish Collective Asset-management Vehicle (“**ICAV**”), Ireland’s newest investment fund vehicle, was introduced in March 2015. The *Irish Collective Asset-management Vehicle Act 2015* (the “**ICAV Act**”) is the culmination of a joint government and industry project to make available to promoters a legal framework for a corporate fund vehicle that is specifically designed for investment funds. Matheson partners were extensively involved in the industry project to introduce the ICAV, the introduction of which increases the range of available fund vehicles in Ireland, satisfying both promoter and investor appetite, and reflecting a practical balance between organisational and operational flexibility on the one hand and investor protection on the other.

The ICAV is a new corporate vehicle designed for Irish investment funds, providing a tailor-made solution for both UCITS and alternative investment funds (“**AIFs**”). Conceived specifically with the needs of investment funds in mind, the ICAV has the advantage that it is not impacted by amendments to certain pieces of European and domestic company legislation that are targeted at trading companies rather than investment funds.

Conversion to an ICAV

The ICAV Act provides for a straightforward procedure whereby investment companies can convert to ICAV status while retaining their corporate identity and performance history. The provisions governing conversion are similar to the tried and tested procedure for the migration of non-Irish domiciled investment companies into Ireland. It is expected that many Irish investment companies will pursue this option and will consider that the costs of conversion are outweighed by the benefits offered by the ICAV.

Conversion by Continuation

Conversion is by way of continuation, so that an investment company converting to an ICAV (the “**Converting Fund**”) retains its identity and track-record. As soon as the Converting Fund has submitted a complete conversion application to and has been registered by the Central Bank of Ireland (the “**Central Bank**”) as an ICAV, it is deemed to be an ICAV and will cease to be a company for all purposes under the ICAV Act. Importantly, however, the conversion process will not operate to:

- affect the Converting Fund’s use of its past performance data;
- prejudice or affect the identity or continuity of the Converting Fund as previously established and registered for the period for which it was established and registered in Ireland;
- affect any contract made, resolution passed or any other act or thing done in relation to the Converting Fund during the period that it was so established and registered;
- affect the rights, authorities, functions and liabilities or obligations of the Converting Fund or any other person; or
- render defective any legal proceedings by or against the Converting Fund.

Conversion – Practical Steps

The provisions of the Converting Fund’s memorandum and articles of association (“**M&A**”) should be reviewed to ensure that it has the ability to engage in a conversion. The M&A of many Irish investment funds structured as Part 24 investment companies contain provisions which permit such restructuring. Shareholder approval will be required in order to proceed with a

conversion, and this can be obtained at the Converting Fund's annual general meeting or by way of an extraordinary general meeting. The conversion process will be initiated by applying to the Central Bank.

The following documents must form part of the conversion application:

- a copy of the Converting Fund's certificate of incorporation together with a certified copy of the Converting Fund's M&A;
- the proposed instrument of incorporation of the Converting Fund;
- a list setting out particulars in relation to the registered office, directors and secretary of the Converting Fund;
- a statutory declaration of a director of the Converting Fund, made not more than 28 days before the date on which the application is made, to the effect that:
 - the Converting Fund is not being wound up and is not subject to any petition or order for winding up or liquidation, or relating to the appointment of a receiver, liquidator, examiner or other similar person, and is not subject to any scheme or arrangement made with creditors;
 - the conversion is permitted by and has been approved in accordance with the Converting Fund's M&A; and
 - any approvals required by any contract entered into or undertaking given by the Converting Fund has been obtained or varied;
- a declaration of solvency made not more than 28 days before the date on which the application is made, stating that the director making the declaration has made a full inquiry into the affairs of the Converting Fund and has formed the opinion that the Converting Fund is able to pay its debts as they fall due, contains a statement of the company's asset and liabilities that is not more than three months before the date of the making of the declaration and accompanied by a report of an independent auditor along with a statement from the independent auditor that they have given consent to the making of the declaration with the report attached;
- a schedule of any charges or security interests created or granted by the Converting Fund showing their priority which will be the same as if the Converting Fund were to remain a company;
- notification of the proposed name of the Converting Fund if different from its existing name (other than where the only change is to delete the words "public limited company" or "plc" from the existing name, to be replaced by "Irish Collective Asset-management Vehicle" or "ICAV"); and
- a statutory declaration of a director or solicitor confirming that the above requirements have been met.

The Central Bank shall, as soon as is practicable after receipt of the complete application for conversion, publish notice of it in the *Iris Oifigiúil* (the official Irish State Gazette).

Registration Pursuant to Application for Conversion

Where the Central Bank receives an application which complies with the requirements outlined above, the Central Bank will issue a registration order in respect of the registration of the Converting Fund as an ICAV, and enter in a register the details of charges and securities interests of the ICAV.

The obligation rests with the Converting Fund, as soon as possible after being registered as an ICAV, to apply to the Registrar of Companies to be de-registered as a company. On receipt of such application, the Registrar of Companies shall issue a certificate of de-registration of the Converting Fund, enter in the register of companies that the Converting Fund is de-registered as a company and shall publish in the Companies Registration Office Gazette the date of registration of the Converting Fund as an ICAV and the previous name of the Converting Fund if different to that registered as an ICAV.

From the date of registration, the Converting Fund will become an ICAV and will be authorised to carry on business as an ICAV by the Central Bank. As stated above, the registration does not affect the identity or continuity of the Converting Fund as previously established and registered. In practical terms, this means that the Converting Fund will not be required to re-execute its depositary contract, material service provider contracts, or any derivative and holdings related contracts, and will be able to continue to use past performance data.

Comment

The introduction of the ICAV provides an additional option for promoters, complementing the pre-existing range of Irish fund vehicles available. This does not result in any changes for established investment companies, which continue to co-exist with the ICAV. However, it is anticipated that the ICAV will become the vehicle of choice for AIFs and UCITS in Europe. The uncomplicated conversion process is expected to be of interest to existing UCITS and AIF investment funds structured as investment companies, and it is expected that many will seek to avail of the conversion process.

If you require detailed advice relating to the ICAV, please get in touch with your usual Asset Management and Investment Funds Group contact who would be delighted to assist you.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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