

New Corporate Vehicle for Irish Funds – the ICAV

The Irish Minister for Finance has recently published the General Scheme of the Irish Collective Asset-management Vehicle (ICAV) Bill (the “**General Scheme**”). The publication followed approval of the General Scheme for legal drafting at a Government meeting on 17 December 2013. The Minister has stated that he will press ahead with the drafting of the bill as a matter of priority.

Matheson partners have been extensively involved in an industry project to introduce the ICAV, which it is hoped will lead to the publication of a bill early in 2014. The introduction of the ICAV will increase the range of fund vehicles in Ireland available to promoters, fulfilling one of the initiatives outlined in the Irish Government’s IFSC Strategy 2011-2016.

What is an ICAV?

The ICAV is a new corporate vehicle designed for Irish investment funds. It will sit alongside the public limited company (“**plc**”), which has been the most successful and popular of the existing Irish collective investment fund vehicles to date. The ICAV is expected to be incorporated with the Central Bank of Ireland (the “**Central Bank**”) and will provide a tailor-made corporate fund vehicle for both UCITS and alternative investment funds (“**AIFs**”).

Why is the ICAV being introduced?

The ICAV legislation will modernise the corporate fund structure and is conceived specifically with the needs of investment funds in mind. As a bespoke corporate investment fund vehicle, a fund established as an ICAV will have the advantage that it will not be impacted by amendments to certain pieces of European and domestic company legislation that are targeted at trading companies rather than investment funds.

An important feature of the ICAV is that it will be able to elect its classification under the US check-the-box taxation rules. The Irish plc is not currently permitted to check-the-box for US tax purposes, meaning that it is treated as a separate entity and subject to two levels of tax: one at the corporate level where the income is earned and the second at the shareholder level when distributions are made. An “eligible entity” ie, an entity that can elect its classification under the check-the-box rules, can elect for alternative, more favourable tax treatment. The ICAV will be an eligible entity for these purposes.

Features of the ICAV

The primary features of the ICAV, as currently proposed, are set out below.

- An ICAV will not have the status of an ordinary Irish company established under the Irish Companies Acts. Instead, it will have its own legislative regime to ensure that the ICAV is distinguished from ordinary companies and therefore not subject to those aspects of company law legislation which are not relevant or appropriate to a collective investment scheme.

- An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. It may be listed on a stock exchange. Investors will own shares in the ICAV and the ICAV will be able to issue and redeem shares continually according to investor demand. In this regard, there is no difference between the ICAV and other open-ended collective investment schemes.
- The Central Bank will be the supervisory authority for the ICAV. It will adopt a similar approach in respect of filings and review as that which applies to fund vehicles currently authorised by the Central Bank, depending on whether the scheme is a UCITS or an AIF.
- The ICAV will have a governing document likely to be known as an instrument of incorporation (“IOI”). Similar to the memorandum and articles of association of a plc, the IOI will be the constitutional document of the ICAV. The primary reason for differentiating between memorandum and articles of association and an IOI is to emphasise the distinction between the ICAV and existing plcs as different types of corporate entity.
- In the case of changes to the IOI, it is envisaged that there will be no requirement to obtain prior investor approval where the depositary certifies that changes to the IOI do not prejudice the interests of investors (similar to the requirements relating to changes to the trust deed of a unit trust).
- Like a plc, an ICAV must have a board of directors to govern its affairs. Similar to other collective investment schemes, the ICAV may either be managed by an external management company or be a self-managed entity.
- Similar depositary requirements to those that currently exist for an investment company will apply to an ICAV (which will vary depending on whether the ICAV is a UCITS or AIF).
- It is likely that the board of directors of an open-ended ICAV will be permitted to elect to dispense with the holding of an annual general meeting by giving written notice to all of the ICAV’s shareholders.
- It is expected that the preparation of financial statements for an ICAV will be governed by the requirements for UCITS or AIFs, and that no additional requirements will be prescribed (save that the accounts be prepared in accordance with certain accounting standards). In an innovation, it is proposed that it will be possible to prepare accounts per sub-fund.
- Existing funds established as plcs will have the option to convert to ICAV status. Provision will be made for the migration of funds domiciled outside of Ireland into Ireland as ICAVs by continuation.

Comment

The proposals for the ICAV legislation demonstrate Ireland’s pro-active approach in meeting the evolving needs of fund promoters, and its competitiveness as a leading international fund domicile. The introduction of the ICAV will provide an additional option for promoters, complementing the existing range of Irish fund vehicles available. The proposed ICAV legislation will not result in any changes for established plcs which will continue to co-exist with the ICAV. However, it is anticipated that the ICAV will become the vehicle of choice for AIFs in Europe.

We will continue to keep you updated as the ICAV legislation develops. Please get in touch with your usual Asset Management and Investment Funds Group contact, or any of the contacts listed in this publication, should you require further information in relation to the ICAV.

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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