MASON HAYES & CURRAN

Ireland's New Fund Vehicle: The ICAV

The Irish Collective Asset-management Vehicles Act 2015 (the "ICAV Act") was signed into Irish law on 4 March 2015. The ICAV Act creates a new corporate vehicle, the ICAV, for investment funds. The ICAV is incorporated and operates under legislation designed, in consultation with the funds industry, specifically to meet the operational needs of investment funds, their managers and their investors. The creation of this new corporate vehicle outside Irish Companies Acts is a key development in the Irish Government's continued commitment to support the Irish funds industry.

What is an ICAV?

The ICAV is a new form of Irish corporate investment fund vehicle to exist alongside the longer-established Irish fund structures: the investment company, unit trust, common contractual fund and investment limited partnership. Both UCITS and AIFs may be structured as ICAVs. The ICAV may be structured as a standalone vehicle or as an umbrella fund, as open-ended or closed-ended and can be self-managed or externally managed.

Dublin, London & New York

Advantages of the ICAV Structure

One of the most notable advantages to the ICAV is that it is permitted to "check the box" for classification in the US as an "eligible entity". This means that ICAVs are treated as flow-through vehicles or partnerships for US tax purposes, resulting in more favourable tax treatment in the US.

Another key advantage to the ICAV is that because it is created under legislation specifically designed for the funds industry, it is not subject to the Irish Companies Acts. This means, in particular, that it is not required to comply with provisions of company law which are not appropriate for an investment fund. In particular, the ICAV Act allows ICAVs to:

- produce separate audited accounts for each sub-fund of the ICAV;
- dispense with holding AGMs in specific circumstances;
- hold a single investment, i.e. ICAVs are not subject to a requirement to spread investment risk; and
- make non-material amendments to its constitutive document without the requirement for shareholder approval.

Investment companies already established are permitted to convert to an ICAV. Where such a conversion takes place, the performance history of the investment company will be available to the newly formed ICAV. The ICAV conversion process is by way of continuation and is similar to the process already in use for non-Irish domiciled investment companies wishing to re-domicile into Ireland.

Key Provisions of the ICAV Act

Other key provisions of the ICAV Act include:

1. The Central Bank of Ireland (the "Central Bank") is the entity responsible for the incorporation and authorisation of an ICAV
2. ICAVs have a constitutional document known as an Instrument of Incorporation ("IOI"). The IOI is similar to the Memorandum and Articles of Association utilised by plcs
3. ICAVs are required to have a board of directors and a company secretary. A minimum of two directors is required
4. Changes to the IOI are possible without seeking the prior approval of investors where the depositary to the ICAV certifies that the changes to the IOI do not prejudice the interests of the ICAV's investors
5. ICAVs are permitted to take investments and redeem them resulting in a variable capital structure
6. As ICAVs are not deemed to be companies under the provisions of the Irish Companies Acts, they are not required to make filings with the Companies Registration Office i.e. filings in respect of new charges for an ICAV. All such filings are to be made with the Central Bank
7. ICAVs may be structured as standalone funds or umbrella schemes (with segregated liability between sub-funds);
8. ICAVs are permitted to prepare and present separate accounts in respect of a sub-fund or sub-funds
9. ICAVs are not required to hold an annual general meeting
10. The ICAV Act provides for the migration of funds domiciled outside of Ireland into Ireland as ICAVs

The Central Bank is accepting applications for registration of ICAVs from 16 March 2015. It is expected that confirmation of registration as an ICAV will take approximately two weeks, upon a complete ICAV application being submitted to the Central Bank.

Conclusion

The introduction of the ICAV Act represents a significant modernisation of Irish investment fund law, demonstrating the Irish industry's commitment to a pro-active approach to meeting the needs of promoters and investors alike.

Whilst the introduction of the ICAV Act does not affect existing fund structures, and funds may still be established as investment companies, unit trusts, common contractual funds or investment limited partnerships, we anticipate that the ICAV will become the structure of choice for Irish domiciled funds. We also expect that a significant number of existing Irish funds, established under the Irish Companies Acts, will convert to an ICAV structure given the simplicity of the conversion process.

For more information, please contact a member of our Investment Funds team:

Fionán Breathnach
Partner, Head of Investment Funds
t +353 1 614 5080
e fbreathnach@mhc.ie

Conor Durkin
Partner, Investment Funds
t +353 1 614 5261
e cdurkin@mhc.ie

Robert Henson
Partner, Tax
t +353 1 614 2314
e rhenson@mhc.ie

MHC.ie

Dublin
South Bank House
Barrow Street, Dublin
D04 TR29
Ireland
t +353 1 614 5000
e dublin@mhc.ie

London
1 Cornhill
London
EC3V 3ND
United Kingdom
t +44 20 3178 3366
e london@mhc.ie

New York
1450 Broadway
39th Floor, New York
NY 10018
USA
t +1 646 862 2028
e newyork@mhc.ie