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Ireland's ICAV – road to establishment and achievable benefits

Ireland has long been noted as the domicile of choice for managers who are seeking to establish regulated funds which may be distributed globally.

Ireland offers a comprehensive suite of structured legal forms including UCITS funds and non-UCITS alternative investment funds ("AIF's"). AIF's may take the form of:

- common contractual funds;
- investment limited partnerships;
- variable capital companies; or
- unit trusts.

It was noticeable however, that Ireland did not offer a fund structure similar to the SICAV offered in other EU jurisdictions and the Irish government set about filling this gap as part of its IFSC Strategy for 2011-2016.

The response

On 29 July 2014, Ireland's Minister of State at the Department of Finance, Simon Harris TD, published the Irish Collective Asset Management Vehicle ("ICAV") Bill.

In its most simplistic form, the ICAV is a new corporate vehicle designed for Irish funds. It will sit alongside the Public Limited Company ("PLC") which has been the most successful and popular of the existing fund vehicles to date.

Legal form – what's the difference between the ICAV and the PLC?

Currently Irish domiciled funds which are structured as companies are incorporated under the Irish Companies Acts 1963-2013 and are consequently established as PLCs. They are therefore subject to the reporting requirements and restrictions of the Companies Acts. Conversely, the ICAV will not be required to be incorporated under the Irish Companies Acts.

This is seen as a positive, given that the Irish Companies Acts are more applicable to Irish trading companies than investment funds. Reduced administrative obligations and costs are likely to be applied to funds established as an ICAV as a result.

ICAV – tax transparency – its unique selling point for US investors

Most offshore funds are considered Passive Foreign Investment Companies ("PFIC") for US income tax purposes. PFIC classification can give rise to unfavourable tax treatments for an investor and as a result may reduce the attractiveness of the fund to many US taxable investors.

The PLC as a corporate entity cannot elect to be treated as a partnership for US tax purposes. As a result, if a manager wished to attract US investors to its Irish fund it generally structured such a fund in the form of an investment limited partnership or unit trust.

It is expected that the ICAV will similarly be treated as a corporate entity for US tax purposes, however it should have the ability to "check-the-box" to be treated as a partnership (if it has more than one investor) or a disregarded entity (if it has only one investor) for US tax purposes.

The addition of the ICAV to the suite of available Irish fund structures is therefore a significant development for the attraction of US managers and US investors to Irish domiciled funds.

Good news for re-domiciliation of offshore funds to Ireland

Given the ICAV's aforementioned ability to "check-the-box" for US tax purposes, there will be an opportunity for existing offshore funds to re-domicile to Ireland and continue to maintain favourable tax treatments for their US taxable investors.

The Companies (Miscellaneous Provisions) Act, 2009 (the "Provisions"), introduced efficient and effective processes for re-domiciliation of funds to Ireland. The Provisions allow offshore corporate funds from certain prescribed locations to migrate to Ireland by re-registering as an Irish UCITS or AIF authorised by the Central Bank of Ireland while maintaining its legal identity.

Given that there is no change in legal identity, the re-domiciliation should not constitute a taxable event for investors. In addition and importantly, the re-domiciling fund should retain its performance track record post migration.

Existing PLC's will be able to convert to an ICAV and offshore funds considering re-domiciling to Ireland can re-domicile to Ireland by continuation as an ICAV. It is expected that a large number of existing PLC's will take advantage of this option to migrate to an ICAV in particular to avail of the tax treatment benefits available for US taxable investors. The entire conversion process is expected to take 6 – 8 weeks based on the current re-domiciliation regime that is in place under the Irish Companies Acts.

What other features does the ICAV have?

To a large extent, the ICAV will be quite similar to the PLC, for example:

- it will be authorised and supervised by the central Bank of Ireland;
- it may be established as a UCITS or AIF;
- its registered office must be in Ireland;
- it must have a minimum of two directors on its board;
- its assets must be entrusted to a depositary/custodian;
- it may establish multiple share classes;
- it may be established as an umbrella fund with segregated liability between its sub-funds;
- it will be subject to the same attractive Irish tax regime that currently applies to PLC's; and
- annual accounts in accordance with accounting standards must be published.

The ICAV will also have some differentiating features including:

- it will be incorporated by filing certain prescribed documents with the Central Bank of Ireland as opposed to the Irish Companies Registration Office;
- it will have an instrument of incorporation as opposed to a Memorandum and Articles of Association;
- shares and/or debentures may be issued;
- annual financial statements may be presented on a sub-fund by sub-fund basis;
- it has more simplified procedures for schemes of amalgamation, mergers and reorganisations; and
- the requirement to have an AGM may be avoided by giving at least 60 days' notice to all of the ICAV's shareholders.

What happens next?

The ICAV bill is presently undergoing parliamentary and regulatory reviews and current expectation is that the ICAV bill will become law by the end of 2014.

The Central Bank of Ireland has confirmed that it will be in a position to begin accepting the establishment of ICAVs within two weeks of the bill being signed into Irish legislation.

Conclusion

The ICAV represents an additional structural option to managers that will complement the existing options available in Ireland and will further enhance Ireland's reputation as the asset management domicile of choice.

Contact

Niamh Meenan
Partner, Global Head of Asset Management
D +353 (0)1 6805 614
E niamh.meenan@ie.gt.com

John Glennon
Partner
D +353 (0)1 6805 630
E john.glennon@ie.gt.com

David Lynch
Director
D +353 (0)1 6805 923
E david.lynch@ie.gt.com

24-26 City Quay, Dublin 2

@GrantThorntonIE

www.grantthornton.ie

Offices in Dublin, Belfast, Cork, Limerick, Kildare and Galway