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Conversion of Irish Investment Funds structured as PLCs to ICAVs

Introduction

The Irish Collective Asset-management Vehicles Act 2015 (the “ICAV Act”), enabled the establishment of a new structure for regulated investment funds domiciled in Ireland. Since the enactment of the ICAV Act, the ICAV has become the default structure of choice for asset managers seeking to establish new regulated funds in Ireland. The ICAV is a flexible corporate structure that has been used to establish both UCITS and Alternative Investment Funds (“AIFs”).

The operational and organisational advantages of the ICAV structure over existing structures have been well documented in previous articles and these can be achieved without any impact on the past performance of the existing structure.

Any investment fund that is incorporated as a public limited company (“PLC”) which wishes to avail of the benefits of the ICAV structure can do so under the conversion provisions set out in the ICAV Act¹, by applying to the Central Bank of Ireland (the “Central Bank”) to be registered as an ICAV by way of continuation. Many asset managers have taken the opportunity to avail of the relatively uncomplicated conversion process.

We have set out below a practical guide to the process involved for a UCITS or AIF investment company to effect such a conversion:

¹ Section 140 of the Irish Collective Asset-management Vehicles Act 2015.

For further information on any of the issues discussed in this article please contact:



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Step 1

- ▣ Board meeting of converting PLC to be convened to consider and if appropriate approve the commencement of steps to convert the PLC to an ICAV.

Step 2

- ▣ Instrument of incorporation for the ICAV to be drafted and PLC prospectus to be updated for consistency and to reflect the proposed conversion.
- ▣ Circular to shareholders² of the PLC to be drafted to (i) inform shareholders of the PLC of the proposal; and (ii) to seek the shareholder resolutions required at a general meeting of the PLC to be convened (the “General Meeting”).
- ▣ Material contracts to be reviewed and updated as necessary to reflect the change of structure.³

Step 3⁴

- ▣ Submit the revised draft prospectus of the ICAV to the Central Bank for review.

Step 4

- ▣ Convene board meeting of the PLC to consider and approve the proposed ICAV prospectus, circular, ICAV instrument of incorporation and any amendments to material contracts.
- ▣ Circular to be issued to shareholders of the PLC⁵.

Step 5

- ▣ General Meeting of PLC to be convened and special resolutions to be sanctioned if deemed fit to permit and approve the conversion of the PLC to an ICAV and to adopt the instrument of incorporation.

Step 6

² Circular is not reviewed by the Central Bank however where the PLC is listed, circular to be cleared by Euronext Dublin in advance of circulation to shareholders.

³ However, registration of a PLC as an ICAV will not operate to affect any contract made in relation to the investment company during the period that it was so established and registered or affect the rights, authorities, functions and liabilities or obligations of the PLC or any other person.

⁴ Only relevant in the case of a UCITS fund.

⁵ Shareholders to be provided with 21 clear days notice ahead of the General Meeting.

- ▣ Administrator of the PLC to be consulted regarding the statement of the PLC's assets and liabilities to be contained in the declaration of solvency referred to in Step 9 below.
- ▣ Auditors of the PLC⁶ (the "Auditors") to be consulted regarding the report⁷ to be made by that person and attached to the declaration of solvency referred to in Step 9 below.

Step 7

- ▣ Board meeting of the PLC to be convened to consider, approve and execute where applicable the ICAV application to the Central Bank and additional documentation to accompany the application including inter alia the declarations referred to in Step 9 below. A full list of the documentation to accompany the application to the Central Bank is detailed in section *Appendix 1* hereto.

Step 8

- ▣ Once the declaration of solvency of the directors of the PLC is executed pursuant to Step 7, execution by the Auditors as referred to in Step 6 will be required in relation to the report attached to the declaration of solvency and in relation to the statement by that person that he/she has given and has not withdrawn his/her consent to the making of the declaration of solvency.

Step 9

- ▣ Upon receipt of all relevant executed documentation, apply to the Central Bank to be registered as an ICAV by way of continuation by submitting the relevant Central Bank application form and various required documents referred to in section 140 of the ICAV Act (see *Appendix 1*).

Step 10

- ▣ Following the registration of the ICAV, an application must be made as soon as possible for the PLC to be deregistered in the Companies Registration Office with effect from the date of the PLC's registration as an ICAV.

Indicative Timeframe

In the case of a UCITS PLC, taking into account the timeframe for the drafting of the revised ICAV prospectus and Central Bank review of same, instrument of incorporation, circular and where

⁶ Alternatively report to be prepared by an Independent Person i.e. a person who at the time the report is made is qualified to be the auditor of the investment company (Section 141(4) of the ICAV Act).

⁷ Report to state whether in that person's opinion, based on the information and explanations given to him/her, the opinion of the director in the declaration of solvency and the statement of assets and liabilities of the PLC contained in the declaration of solvency are reasonable.

relevant updated material contracts with input from relevant stakeholders, the conversion should be reasonably achievable within a four month period.

The timeframe for conversion of an AIF PLC to an ICAV should be slightly shorter.

The following practical considerations for an ICAV conversion project include the following:

- ▣ ensure that a plan, paying particular regard to the specific timing considerations for the execution of the declaration of solvency, as well as for the preparation of the independent person's report is agreed with all relevant stakeholders prior to initiating the project.
- ▣ the conversion of the PLC to an ICAV must be permitted by and be approved in accordance with the memorandum and articles of association of the PLC (the "M&A") and therefore it is necessary to review the M&A to determine whether it is required to be amended to provide for the conversion of the PLC to an ICAV.⁸
- ▣ consider any possible tax implications that a conversion may have on existing investors, in particular whether there are any U.S. tax implications.

The Dillon Eustace Asset Management and Investment Funds Team has a broad experience in assisting a number of asset managers and fund boards to Irish domiciled UCITS and AIFs with ICAV conversion projects.

If you have any questions in relation to the above, please contact your usual contact in the Team.

Dillon Eustace
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⁸ Section 140(3)(d)(iv) of the ICAV Act.

APPENDIX 1**Documentation to be Submitted to the Central Bank in support of an Application for Registration as an ICAV by way of Continuation.**

(i)	Application for registration as an ICAV by way of continuation duly signed by a director of the PLC;
(ii)	A copy of the certificate of incorporation of the PLC;
(iii)	A certified copy of the M&A of the PLC;
(iv)	A certified copy of the instrument of incorporation in respect of the proposed ICAV;
(v)	A list setting out particulars of the registered office, directors and secretary of the PLC;
(vi)	<p>A statutory declaration of a director of the PLC made not more than 28 days before the date on which the application is made to the Central Bank to the effect that:</p> <p>(a) No petition or other similar proceeding to wind up or liquidate the PLC has been notified to it and remains outstanding in any place and no order has been notified to the PLC, or resolution adopted, to wind up or liquidate it in any place,</p> <p>(b) The appointment of a receiver, liquidator, examiner or other similar person has not been notified to the PLC and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the PLC or its property or any part of its property,</p> <p>(c) The PLC is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the PLC with creditors in any place,</p> <p>(d) The conversion is permitted by and has been approved in accordance with the M&A, and</p> <p>(e) Any consent or approval to the proposed conversion required by any contract entered into or undertaking given by the PLC has been obtained or varied;</p>
(vii)	<p>A declaration of solvency made by a director of the PLC not more than 28 days before the date on which the application is made to the Central Bank stating that he or she has made a full inquiry into its affairs and has formed the opinion that the PLC is able to pay its debts as they fall due. The declaration of solvency must:</p> <p>(a) Contain a statement of the PLC's assets and liabilities as at the latest practicable date before the making of the declaration, and, in any case, as at a date that is not more than 3 months before the date of the making of the declaration;</p> <p>(b) Have attached a report made by a person who, at the time the report is made, is</p>

	<p>qualified to be the auditor of the PLC (an “Independent Person”) stating whether, in his/her opinion based on the information and explanations given to him/ her, the opinion of the director who signed the declaration of solvency and the statement of the PLC’ assets and liabilities are reasonable; and</p> <p>(c) Have attached a statement by the Independent Person that he or she has given and has not withdrawn consent to the making of the declaration;</p>
(viii)	A schedule of charges or security interests created or granted by the PLC;
(ix)	Where different from its existing name, notification of the proposed name of the ICAV (other than where the only change is to delete the words “public limited company” or “plc” from the PLC’s existing name); and
(x)	A statutory declaration made by a practising solicitor engaged for the purpose by the investment company, or a director of the investment company, stating that the requirements in relation to the documents to accompany the application to the Central Bank have been complied with and the Central Bank may accept such declaration as sufficient evidence of compliance.

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