DILLON EUSTACE

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ICAV Update

As interested readers will be aware[1], Ireland has been promising for some time to introduce a new type of corporate fund structure known as an "**ICAV**" which will not be required to be incorporated under the Irish Companies Acts and will not be a public limited company ("plc"). ICAVs will be available as a UCITS and as AIFs, will offer a more administratively efficient structure for corporate fund vehicles (benefitting from the disapplication of company law provisions designed for trading companies), and will be structured so that they can "*check-the-box*" to be treated as a partnership or disregarded entity for US federal tax purposes. That will facilitate investment by US taxable and/or US taxable and tax-exempt investors in a master feeder structure.

The latest update is that the Irish government[2] has now issued the draft Irish Collective Asset-management Vehicle Bill 2014 (the "**ICAV Bill**") ICAV Bill 2014[3] which is expected to become law by end of Q3 2014.

Brian Kelliher (Funds Partner) and David Lawless (Tax Partner) most recently explained the ICAV's main benefits and features in "*The dawn of a new era for the Irish Funds Industry*"[4]. These benefits and features are highlighted again at the end of this update which looks at when the structure will be available and how existing UCITS and QIAIF plcs established as plcs under the Irish Companies Acts can convert into ICAVs.

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[1] See Dillon Eustace publications: *Funds Newsletter Q1, 2014* and *Q2, 2014*; "*ICAV – New Corporate Fund Structure*" (January 2014); "*New Irish Fund Structure to Facilitate U.S. Investment*" (April 2012).
[2] Minister Simon Harris' Press Release ICAV 29 July, 2014.
[3] ICAV Bill No. 78 of 2014.
[4] "The dawn of a new era for the Irish Funds Industry" by Brian Kelliher & David Lawless (Dillon Eustace) (Hedge Week Special Report April 2014).

Timing

On July 29, 2014 the Irish government announced publication of the ICAV Bill. Current expectation is that, following parliamentary and regulatory reviews, it will become law by the end of Q3, 2014 and accompanied by related Central Bank regulations and guidance. It is understood that the Central Bank expects to be in a position to accept ICAV Applications within two weeks of the legislation being enacted.

The legislation's main focus is on the process of registering an ICAV with the Central Bank – the ICAV needs separately to obtain its authorisation as a UCITS or AIF – and matters such as segregated liability, share issuance and transfer, governance, audit, winding-up, etc.

Most importantly, however, the ICAV Bill 2014 also allows existing UCITS and AIF investment companies convert to and continue as ICAVs quite simply and also allows foreign investment companies efficiently redomicile or migrate to Ireland, becoming an ICAV upon re-registration here.

Conversion Mechanics

Existing UCITS plcs and AIF plcs can convert to ICAV status in a straightforward manner by making an application to the Central Bank. The application requirements, the registration/de-registration process and the affects of conversion are highlighted below.

A word of warning, however. One of the requirements is that "*the conversion is permitted by and has been approved in accordance with the memorandum of association and articles of association of the company*". Advance planning – and actions such as convening EGMs to adopt changes to one's memorandum and articles and to approve conversions – will in most cases be required and that can take time, so start planning now!

(i) Application/Documentation

The conversion process will require completion of an application form which must be submitted to the Central Bank, accompanied by:

(a) a copy of the investment company's certificate of incorporation;

(b) a certified copy of the investment company's memorandum and articles of association and of the instrument of incorporation in respect of the proposed ICAV;

(c) details of the investment company's registered office, directors and secretary;

(d) a statutory declaration of a director of the company to the effect that:

- no petition or other similar proceeding to wind up or liquidate the company has been notified to it and remains outstanding in any place and no order has been notified to the company, or resolution adopted, to wind up or liquidate it in any place;

- the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the company or its property or any part of its property;

- the company 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 company with creditors in any place;

- the conversion is permitted by and has been approved in accordance with the memorandum of association and articles of association of the company; and

- any consented approval to the proposed conversion required by any contract entered into or undertaking given by the company has been obtained or varied.

(e) a declaration of solvency;

(f) a schedule of charges or securities interests created or granted by the company; and

(g) details of the proposed name of the ICAV.

Particular rules apply as the timing and content of the statutory declaration and the declaration of solvency. In addition, the declaration of solvency must be accompanied by an independent person's report.

(ii) Registration/De-registration

The conversion process is completed by the Central Bank issuing a registration order in respect of the registration of the company as an ICAV and entering in a register the details of the charges and securities interests of the ICAV. Once the company is registered as an ICAV, it can then apply to be deregistered at the Companies Registration Office with effect from the date of its ICAV registration.

(iii) Conversion not affect contracts etc.

Registration as an ICAV does not affect any contract made, resolution passed or any other act or things done in relation to the company as previously established and registered in Ireland during the period that it was so established and registered (i.e. prior to the ICAV registration) nor does it operate to affect the rights, authorities, functions, liabilities or obligations of the company or any person or to render defective any legal proceedings by or against the company.

Redomiciling of Migration to Ireland as an ICAV

The ICAV structure is also available to investment companies from other jurisdictions who wish to convert to, register and continue in Ireland as an ICAV.

By using the same provisions as are currently in the Irish Companies Acts which facilitate companies re-registering in Ireland as an investment company by way of a continuation, the ICAV Bill allows a foreign investment company register in Ireland as an ICAV.

Key Benefits and Features

See table on next page.

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Key Benefits/Features/Taxation

Key Benefits	Key Features	Taxation
Adds to the solutions and structures available in Ireland to fund promoter Enhances Ireland's competitiveness as a funds domicile Not required to be incorporated as a plc under the Irish Companies Acts 1963-2013 Not subject to the full rigours of the Companies Acts Reduced administrative obligations and costs for the ICAV ICAV will be structured so that it can "check-the-box" to be treated as a partnership or disregarded entity for US federal tax purposes Will facilitate investment by US taxable investors and/or US taxable and tax-exempt investors in a master feeder fund structure	Authorisation and supervision by the Central Bank Establishment as a UCITS fund or an AIF Can be structured as open-ended, closed ended or limited liquidity AIF Can be set up as umbrella fund with segregated liability between sub-funds Allows for multiple share classes Assets must be entrusted to a depositary Paid up share capital must be equal to the net asset value of the ICAV Registered office in Ireland Board of directors and a minimum of two Directors Must have a secretary Name must be approved by the Registrar of Companies Minimum of two shareholders Shareholders' liability under the instrument of incorporation will be limited to the amount unpaid on their shares Annual accounts (in accordance) with accounting standards must be published	ICAVs will be subject to the same attractive Irish tax regime that currently applies to investment fund plcs (no Irish tax at the fund level) No Irish withholding taxes on distributions where shareholders are not Irish resident or ordinarily resident in Ireland An attractive indirect tax regime whereby many services provided to a fund are VAT exempt and the issue, redemption or transfer of shares are not subject to any transfer taxes It is expected that the ICAV (like the corporate fund PLC) should have the same access to many of Ireland's double taxation agreements (Ireland has signed comprehensive double taxation agreements with 70 countries, of which 68 are in effect) so as to minimise the possible effect of foreign withholding taxes on returns on its investments