



New Irish Tax Transparent Fund Vehicle to Facilitate US Investment – the ICAV

20 February 2015

After much anticipation in the industry, Minister of State, Simon Harris, welcomed the passage of the Irish Collective Asset-management Vehicle Bill 2014 yesterday, 19 February 2015 by both houses of parliament. It is expected to be signed into law by the President next week. The new legislation will see the creation of a new bespoke Irish corporate vehicle specifically tailored for investment funds and their investors, the Irish Collective Asset-management Vehicle (the "ICAV"). In his announcement, the Minister of State stated that the ICAV would "allow Ireland to compete for investment with other key fund domiciles on an equal footing and would further enhance Ireland's reputation as a safe place to do business".

While the ICAV will co-exist with existing fund vehicles, increasing the number of structures available to fund promoters in Ireland, the expectation is that it will replace the public limited company as the fund promoters' preferred vehicle in Ireland.

The ICAV can be used for UCITS, RIAIFs and QIAIFs, can be open or closed-ended and where established as a QIAIF, can avail of the 24 hour fast track application process for authorisation. The Central Bank of Ireland will be the sole entity responsible for their registration and applications for the ICAV will be accepted within two weeks of its commencement.

Key Features of the ICAV

Distinct advantages of the ICAV include the following:

- » it is an "eligible entity" for US tax purposes, whereby it can elect to "check the box". This is an important feature for US investors and is common among offshore fund structures, such as Cayman master-feeder funds. If a check the box election is made, the ICAV will be considered to be a tax transparent entity for US federal income tax purposes, which, in some circumstances, can produce better results for US taxpayers.
- » separate audited accounts can be produced for each sub-fund within an umbrella fund;
- » it does not have any risk diversification/spreading requirements, which will be useful for QIAIFs that do not have any other risk diversification requirements;
- » it does not have to comply with many of the general requirements under Irish company law, eg, the need to convene annual general meetings can be dispensed with;
- » it can change its constitutive document without shareholder consent where the depositary certifies that the changes do not prejudice the interests of investors;
- » specific legislative provisions permitting umbrella structures with segregated liability between sub-funds.

Conversion into an ICAV

Existing Irish public limited companies ("PLCs") or indeed foreign corporate funds are permitted to convert/re-domicile by way of continuation into an Irish ICAV. This means that the new fund will not be considered a new legal entity and instead can retain its existing corporate identity, track record and performance data upon its conversion into an Irish ICAV. In addition, the re-domiciliation/conversion procedure will not affect any existing contracts to which the fund is already a party and will not cause a tax event.

The conversion process is relatively straightforward and is quite similar to the current re-domiciliation process. It does however require shareholder consent. We expect many existing PLCs to look to avail of this procedure.

The ever changing and adapting Irish funds industry has had another record year in 2014 and based on the level of interest that we have received to date, Walkers Ireland expect the new ICAV product will lead to even further growth in Ireland.



Walkers Global Network

Walkers Global with eight international offices in key financial services jurisdictions, including Ireland, the Cayman Islands, Jersey, the British Virgin Islands and London, advise many of the world's most prominent asset managers, fund promoters and institutional investors and are well placed to advise any managers on the new Irish structure or in relation to converting or re-domiciling into Ireland as an ICAV.

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