

# Ireland introduces a new corporate structure for funds

## The ICAV is finally fully operational

- ▶ The new Irish corporate vehicle for establishing investment funds, the Irish Collective Asset Management Vehicle (ICAV) became fully operational on 12 March 2015
- ▶ The ICAV is expected to become the vehicle of choice for both UCITS and AIFs in Europe
- ▶ The ICAV becomes a fifth type of legal structure for funds, joining the Unit Trust, Common Contractual Fund, the Investment Limited Partnership and sitting alongside the pre-existing corporate vehicle, the PLC

The global hedge fund and private equity manager Permal Group announced its intention to move close to \$4bn from the British Virgin Islands to an ICAV - link to statement at: <http://www.irishfunds.ie/media-centre/latest-news/154-iffia-welcomes-first-funds-under-new-icav-act/>

## Why was the ICAV introduced

### Simplified and tailored legislation

- ▶ The ICAV is a corporate vehicle that has been specifically designed as an investment fund vehicle
- ▶ The ICAV will not have the status of an Irish company under the Irish Companies Acts. Rather, it will have its own legislative regime to distinguish it from ordinary companies, this will make for a more streamlined process from a legislative perspective
- ▶ As a bespoke corporate investment fund vehicle, the ICAV will have the advantage that it will not be impacted by amendments to certain pieces of European and domestic company legislation that are targeted at trading companies rather than investment funds

### Facilitating US investment

- ▶ Facilitating investment by US investors is a key objective of many fund promoters and the Irish PLC structure has suffered in that regard as PLCs are considered to be corporations 'per se' for US tax purposes
- ▶ An important feature of the ICAV is that it will be able to elect its classification under the US check-the-box taxation rules. The Irish plc is not currently permitted to check-the-box for US tax purposes, meaning that it is treated as a separate entity and subject to two levels of tax: one at the corporate level where the income is earned and the second at the shareholder level when distributions are made

## Timetable to introduction

20 December 2013	The General Scheme of the ICAV was published on 20 December 2013
29 July 2014	Draft legislation published
19 February 2015	The ICAV bill was passed
4 March 2015	ICAV bill was signed by the President

## Key features of ICAV

### Simplified legislative structure

- ▶ Up to now the corporate funds established in Ireland had the status of an ordinary company established under the Irish Companies Act with appropriate exemptions. The ICAV will have its own legislative regime to ensure that the ICAV is clearly distinguished from ordinary companies, meaning that there should be no unintended consequences for ICAVs and ICAVs will have one piece of discrete and relatively straightforward legislation governing their activities. This should eliminate unnecessary company administrative costs, in particular financial statements should be less complex and the requirement for consent of all investors for certain changes to governing documents will not be required.

### Authorisation

- ▶ ICAVs will be authorised as an AIF (in accordance with AIFMD) or a UCITS
- ▶ ICAVs will be managed by an approved external management company or be a self-managed entity
- ▶ Assets will be required to be entrusted to an approved depository

### Check the box

- ▶ The ICAV can elect its classification under the US 'check the-box' taxation
- ▶ Up to now, where an Irish fund was established as a corporate vehicle (i.e., a public limited company (PLC)), it was considered a corporation for US tax purposes, as a PLC cannot elect its classification under the US 'check the-box' taxation

### Financial statements

- ▶ Financial statements for ICAVs should be less complex than those of plcs as they will be governed by UCITS notices or regulations issued by the Central Bank and not company law. The ICAV will have a choice of accounting standards
- ▶ It will be possible to prepare accounts for sub-funds. Sub funds may have different year ends

### Investment diversification requirements

- ▶ ICAVs will not be subject to a statutory requirement to spread investment risk. This will assist product managers in terms of product structuring

### Annual shareholder meeting

- ▶ The ICAV proposal does not provide for meetings other than AGMs, but mechanisms to obtain shareholder approval will still need to be provided for
- ▶ The Directors can elect to dispense of the AGMs

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### Continuation as an ICAV

- ▶ The legislation will provide a mechanism for existing funds structured as PLCs to continue as ICAVs
- ▶ Continuance procedure so ability to preserve funds' performance record

### Redomiciliation

- ▶ The legislation will provide a mechanism for funds domiciled outside of Ireland to migrate into Ireland as ICAVs by way of continuation, allowing the company to preserve its track record and ensuring it is not a taxable event for investors. It is expected that a company redomiciled as an ICAV can make a 'check the box' election. The ICAV proposal will facilitate redomiciliation of funds that have been able to elect to 'check the box'
- ▶ Application to be authorised by Central Bank as a UCITS or AIF depending on the funds' investment policies

## Redomiciliation/continuation as an ICAV

### Operational benefits

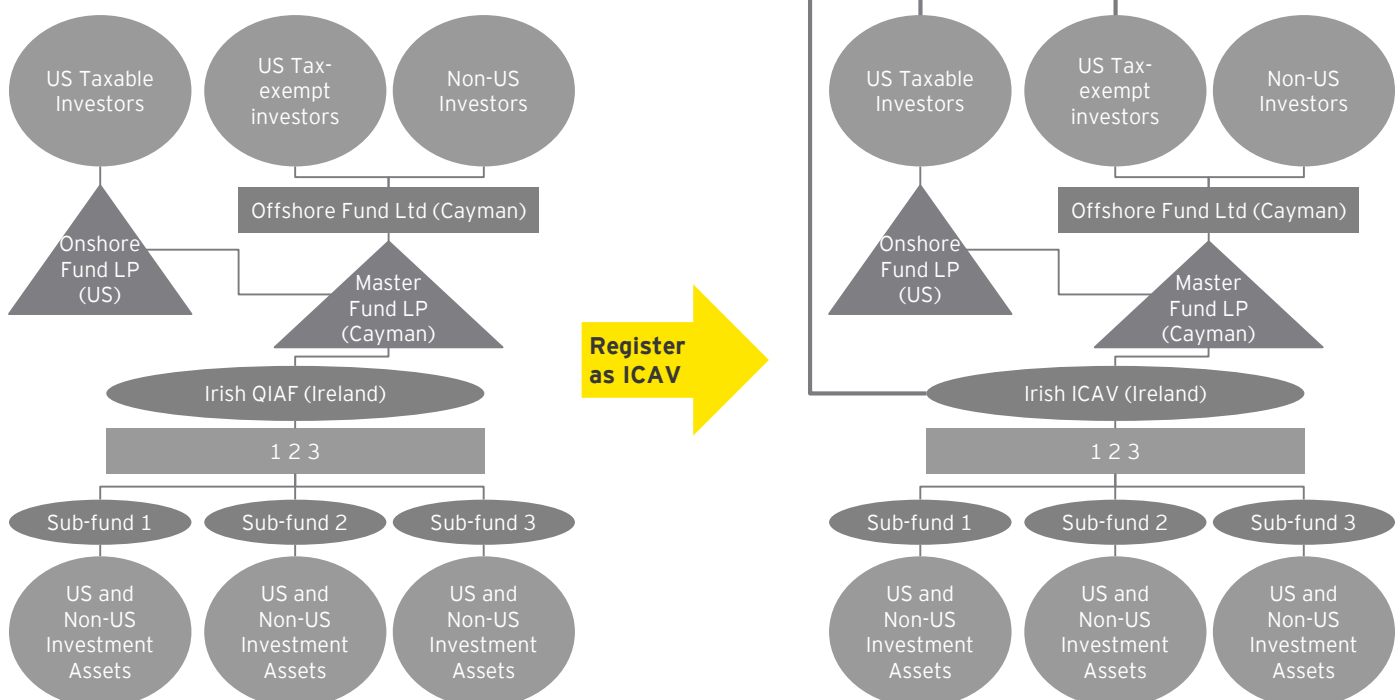
- ▶ Retain existing corporate structure and minimal changes in legal or contractual arrangements
- ▶ Maintain performance record and listings history
- ▶ Minimise or eliminate tax costs on migration for investors and for assets held
- ▶ Consolidate or rationalise fund ranges
- ▶ Potential to minimise US Fin 48 issues under US GAAP

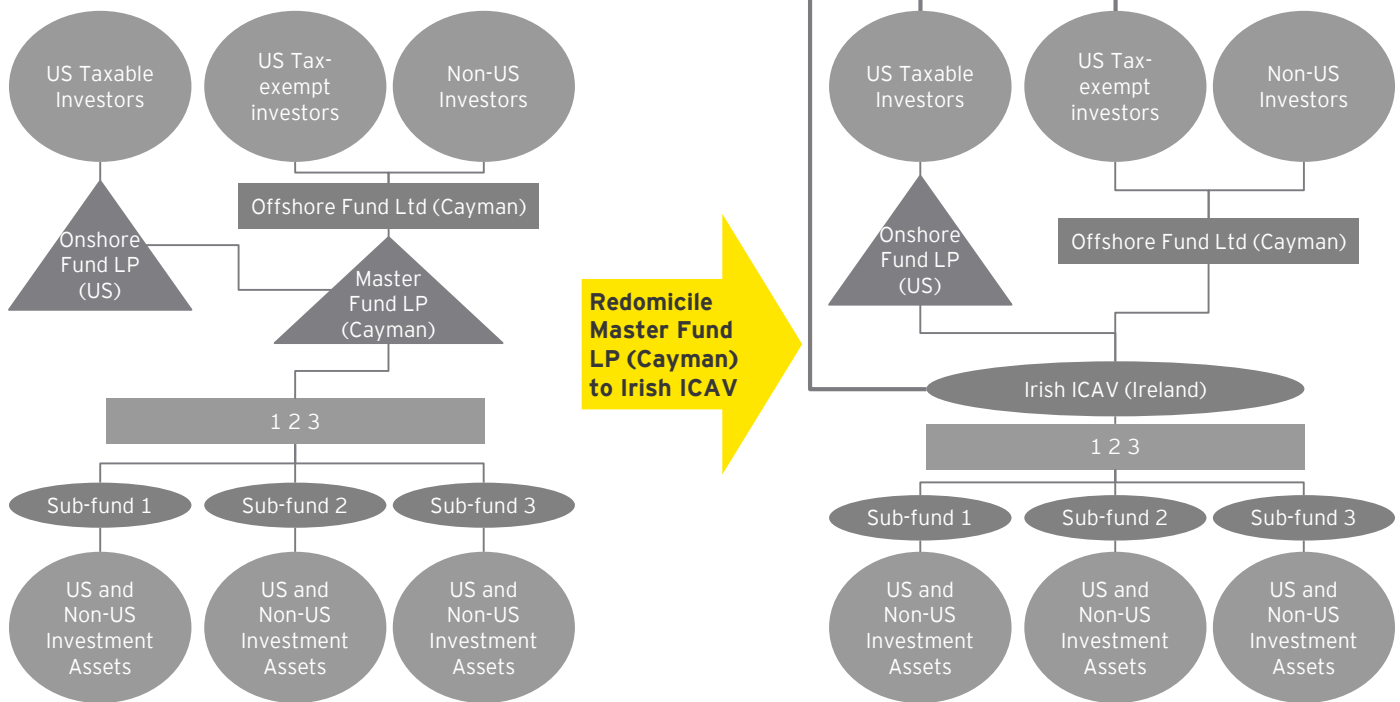
### Benefits of Ireland

- ▶ Simple tested reregistration procedure. ICAV can elect to 'check the box' for US tax purposes.
- ▶ Achieve regulated fund status in accordance with Alternative Investment Fund Managers Directive
- ▶ Avail of Ireland's UCITS product passport and global distribution reputation for UCITS and non-UCITS
- ▶ Enhance investor protection and increase attractiveness to Institutional investors
- ▶ Irish regulated funds are not subject to tax in Ireland. Potential ability to use Irish tax treaty network

## Existing structures for US Investors

US investors now have alternative investment routes





## Comparison: ICAV versus PLC

	ICAV	PLC
Simplified legislative structure	Yes	No
'Check the box' for US tax purposes	Yes	No
Financial statements	Less complex than PLCs. as governed by UCITS notices or regulations issued by Central Bank. Option to prepare accounts at sub-fund level	Governed by company law
Ability to elect to dispense of AGM	Yes	No
Investor approval required for changes to constitutional documentation	No	Yes

## Tax considerations on continuation

Tax confirmations should be obtained to ensure that:

- ▶ No adverse investor tax impact
- ▶ No adverse impact on investments held

## Frequently asked questions

### Registering existing Irish fund as an ICAV

#### What is the process for re-registering as an ICAV?

- ▶ This is done by way of continuation of the existing entity. A completed continuation application is made to the Central Bank of Ireland along with prescribed supporting documentation, including the existing Certificate of Incorporation, Memorandum and Articles of Association, and an Instrument of Incorporation for an ICAV (being the ICAV's constitutional document). A statutory declaration of solvency must be made by a director not more than 28 days before the date of application. Application forms can be found at <http://www.centralbank.ie/regulation/industry-sectors/funds/Pages/RegistrationofanICAV.aspx>
- ▶ Once the CBI has processed the application, it will issue a Certificate of Registration. The obligation then lies with the Fund to deregister with the Companies Registration Office

#### What is the timeline for re-registration as an ICAV?

- ▶ This is not clear as yet, however once the necessary documents are supplied, it is intended that this will be a relatively straightforward process. The timeline for registration for a new ICAV is two weeks. We would expect re-registration to be completed in a shorter timeframe
- ▶ How does the entity 'look' after re-registration? Is it just a name change or more?
- ▶ Name will slightly change

#### How does the change impact on existing agreements in place with the fund?

- ▶ Re-establishing as an ICAV does not create a new legal entity. As such, re-registering as an ICAV should not affect any contracts entered into or impact on any rights under any existing arrangements

#### Will there be a new Irish tax registration number needed?

- ▶ No, the existing number should continue to be applicable

#### How does the change impact on the Fund's qualification under Irish tax legislation as an Investment Undertaking?

- ▶ The ICAV will continue to be taxed as an Investment Undertaking for Irish Tax purposes as provided for in the ICAV Act. It is expected the Finance Bill will take account of the required changes

#### Does the double tax treaty analysis for the fund change once ICAV authorisation in place?

- ▶ No, in the case of continuation of a PLC as an ICAV. However, in the case of a redomiciliation of a non-resident Fund to Ireland as an ICAV, a tax due diligence should be undertaken in order to ensure that the correct analysis is being applied based on Ireland as the new domicile

#### What is the Irish tax impact of using sub-funds? Is an Irish tax registration number needed for each sub-fund?

- ▶ No, a separate registration number is not required. However we expect Revenue to issue clarification shortly. A sub-fund can use the tax registration number of the Master Fund

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