



# Overview of Irish Collective Asset-Management Vehicles

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# 1. Introduction & Background

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# Introduction

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Corporate vehicle specifically tailored for the funds industry

Irish Collective Asset-Management Vehicles (ICAV) Act 2015

Increases range of fund vehicles in Ireland and its attractiveness as a funds domicile

Seeks to streamline and remove unnecessary requirements for establishing and ongoing operation of funds in Ireland

Vehicle of choice for both AIFs and UCITS

# Background

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Government's IFSC Strategy 2011-2016

International competitive disadvantages identified: lack of Irish equivalent to SICAV structure

Ongoing concerns regarding the appropriateness of various existing requirements to funds

The response to the needs of the funds industry –

## **The ICAV**



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## 2. Nature & Salient Characteristics of ICAVS

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# What is an ICAV?

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Corporate entity

Regulated Fund Structure

✓ Alternative Investment Fund (AIF)

- A Retail Investor AIF (RIAIF)
- A Qualifying Investor AIF (QIAIF)

✓ Undertakings for Collective Investment in Transferable Securities (UCITS)

Central Bank of Ireland (CBI) acts as the incorporating, authorising and regulating body for ICAVs



# Attributes of ICAVs

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Separate management company or self-managed

Open-ended / close-ended / limited liquidity

Stand alone or umbrella structure

Sub-funds with segregated liability

Numerous share classes within one structure

Flexibility for investors

# ICAV Requirements

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Registered office must be in Ireland

Governed by an I.O.I. - Constitution

Board of directors - minimum of two directors and one secretary

Capital requirements - share capital equal to its net asset value

Annual accounts must be published

Separate accounts for sub-funds permitted

# Instrument of Incorporation (I.O.I.)

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## **I.O.I. must comply with the following requirements:**

Set out sole object of ICAV:

*“the collective investment of its funds in property and giving members the benefit of the results of the management of its funds”;*

- Share capital is divided into a specified number of shares without assigning any nominal value; e.g. 500,000,000,000

Actual value of paid-up share capital is at all times equal to the value of assets held after deduction of liabilities; and

Share capital is equal to the issued share capital.

# CBI application form – Section 3

Information required to be in I.O.I. by Section 3 application form:

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- Share capital;
- Issue/allotment of shares;
- Redemption/repurchase of shares;
- Determination of net asset value;
- Fees and expenses;
- Depositary/AIFM and Manager;
- Replacement of the management company;
- Exchanges and markets;
- Distributions/dividends;
- Borrowing powers;
- Umbrella funds;
- Subsidiaries;
- Share classes; and
- Alteration of I.O.I.

# CBI application form – Section 3

Other items detailed in I.O.I.

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- Object;
- Share capital;
- Constitution, rights, assets and liabilities of the ICAV;
- Confirmations of ownership and share warrants;
- Terms of subscription;
- Qualified holders, compulsory transfer and compulsory redemption;
- Total redemption;
- Switching of shares;
- Valuation of investments;
- Transfer and transmission of shares;
- Investment objectives;
- General Meetings and notice of general meetings;
- Proceedings at general meetings;
- Votes of shareholders;
- Directors;
- Transactions with directors;
- Powers and proceedings of directors;
- Secretary;
- The Seal;
- Returns of capital;
- Equalisation account;
- Accounts;
- Audit;
- Notices;
- Winding up;
- Termination;
- Indemnity and insurance;
- Re-use of assets; and
- Destruction of documents.

# Directors

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A minimum of two directors

A corporate body may not act as a director of the ICAV

Fitness and probity requirements of the CBI for directors

ICAV's are expected to adopt the Irish Funds Industry Association's *“Corporate Governance Code for Collective Investment Schemes and Management Companies”*

- Two Irish resident directors
- One Independent director
- One representative of the Investment Manager

# Shareholder Approval

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ICAV governed by directors but owned by shareholders

Shareholder approval is required for various matters, e.g.

- Conversion to an ICAV;
- Mergers (max consent threshold of 75% of votes); and
- Amendments to the I.O.I. which are material.

However I.O.I. can be amended if a letter from the depositary certifies that it does not prejudice the interest of the members

Shareholders with 10% or greater can request an AGM

# Summary of Key Points

| Practical Aspects of the ICAV Structure   |  |
|---|--|
| <ul style="list-style-type: none"> <li>Registered with the CBI not the Companies Registration Office</li> </ul>                               | <ul style="list-style-type: none"> <li>Ongoing filings with the CBI</li> </ul>   |
| <ul style="list-style-type: none"> <li>ICAVs may be authorized as stand-alone or umbrella structures</li> </ul>                               | <ul style="list-style-type: none"> <li>Open-ended / close-ended / limited liquidity</li> </ul>   |
| <ul style="list-style-type: none"> <li>Segregated liability between sub-funds</li> </ul>  | <ul style="list-style-type: none"> <li>Option to list on the Irish Stock Exchange</li> </ul>   |
| <ul style="list-style-type: none"> <li>AIFs may issue partly paid shares</li> </ul>   | <ul style="list-style-type: none"> <li>Umbrella ICAVs can prepare separate accounts with different year-ends in relation to each sub-fund</li> <li>Added flexibility &amp; reduction of costs</li> </ul> |
| <ul style="list-style-type: none"> <li>Dispense with annual general meeting by giving 60 days prior written notice to shareholders</li> </ul> | <ul style="list-style-type: none"> <li>No requirement for prior approval for minor changes to I.O.I.</li> </ul>  |
| <ul style="list-style-type: none"> <li>ICAVs not obligated by risk spreading requirements as VCCs are under Irish law</li> </ul>              | <ul style="list-style-type: none"> <li>Convert to ICAV structure by way of continuation without impacting their Irish taxation status</li> </ul>   |
| <ul style="list-style-type: none"> <li>Existing funds domiciled outside of Ireland may migrate to Ireland as ICAVs</li> </ul>                 | <ul style="list-style-type: none"> <li>ICAV can “check the box” for US tax purposes</li> </ul>   |





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# 3. Legislation Providing for the ICAV

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# Legislation

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ICAV Act 2015:

- ICAV legislation distinct from Irish company legislation
- Registration, authorisation & ongoing supervision by the CBI
- ICAV structure protects investors/fund promoters against unanticipated effects of changes in general legislation

# Overview of the ICAV Act 2015 (1/2)

| Section                       | Topic   |
|-------------------------------|---|
| <b>Part 1</b> (chapter 1 - 2) | Preliminary provisions, ICAVs creation and carrying on of business  |
| <b>Part 2</b> (chapter 1 - 5) | Registration and authorisation of ICAVs, amendments to I.O.I., execution of documents and sub-funds of umbrella funds         |
| <b>Part 3</b>                 | Shares and debentures   |
| <b>Part 4</b> (chapter 1 - 3) | Appointment and removal of directors, controls of directors, duties, restrictions, breaches and disqualification of directors |
| <b>Part 5</b>                 | Minutes of meetings, AGMs & EGMs  |
| <b>Part 6</b> (chapter 1 - 4) | Registration of charges, debentures and prohibitions  |
| <b>Part 7</b> (chapter 1 - 4) | Accounting records, annual accounts, directors report and auditing  |

# Overview of the ICAV Act 2015 (2/2)

| Section                        | Topic  |
|--------------------------------|--|
| <b>Part 8</b>                  | Conversions of investment company or UCITS to ICAV   |
| <b>Part 9</b> (chapter 1 - 3)  | Migration, de-registration & declaration of solvency |
| <b>Part 10</b> (chapter 1 - 2) | Receivers and winding up                             |
| <b>Part 11</b> (chapter 1 - 2) | Strike off and restoration of ICAV to register       |
| <b>Part 12</b>                 | Investigations, compliance and enforcement           |
| <b>Part 13</b>                 | Miscellaneous  |



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# 4. Practical Aspects

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# Establishment of an ICAV

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## Two Stage Process

### 1. Registration of the ICAV with the CBI

- ☑ ICAV registration section of the CBI will issue a Registration Order for a new ICAV within two weeks of receipt of a complete application

### 2. Fund authorization

- ☑ Separate process conducted through the funds authorization section of the CBI

# Registration of an ICAV

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Submit written application to the CBI alongside:

I.O.I. signed by subscriber shareholders;

Form AR1;

- signed by subscriber shareholders and directors,
- sets out the name of the ICAV, directors, secretary and address(es) of the registered and head office;

Solicitor's certificate confirming ICAV's compliance with the ICAV Act 2015; and

Any other information the CBI specifies.

# Other Ways of Establishing ICAVs

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- Re-domiciling from overseas jurisdictions
  
- Converting an existing investment company to an ICAV



# Re-domiciliation: Why?

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## Pre ICAV

- Re-domiciliation legislation: Companies (Misc. Provisions) Act 2009
- Enabled offshore funds to change their domicile to Ireland
- EU regulated fund eligible to passport across Europe
- Irish company was unable to facilitate "check the box" election

## Migrations with ICAV

- ICAV can "check the box"
- ICAV also has other advantages over a VCC
- **Part 9** of the ICAV Act 2015 contains provisions for migration

# Re-domiciliation Process

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- ✓ **Section 147** of the ICAV Act 2015
- ✓ Application is made with CBI
- ✓ CBI **AR3 form** and relevant documents
- ✓ **Authorisation process:**
  - ✓ Upon registration of the migrating fund (non-Irish fund) as an ICAV, the Central Bank will authorise the non-Irish fund to carry on business in Ireland.
  - ✓ **QIAIFs:** Authorisation granted 24 hours after ORION filing
  - ✓ **UCITS:** Approximately 6-8 weeks post initial filing

# Re-domiciliation Application

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- ✓ a completed CBI AR3 form for the migration of a non-Irish fund to Ireland as an ICAV;
- ✓ a completed application form for its authorisation as a UCITS/AIF;
- ✓ a certified copy of the certificate of registration and constitutional document of the non-Irish fund;
- ✓ a copy of the I.O.I. in respect of the proposed ICAV;
- ✓ a document listing the details of the directors and secretary;
- ✓ a statutory declaration of a director made no more than 28 days before the date on which the application is made to the CBI;
- ✓ a declaration of solvency from a director;
- ✓ a schedule of any charges granted by the non-Irish fund that would have been registerable in Ireland had the non-Irish fund been created as an Irish ICAV;
- ✓ details of the proposed registered office of the ICAV;
- ✓ any regulatory fee imposed by the CBI; and
- ✓ a statutory declaration by a solicitor/director of the fund confirming all requirements have been met.

Please note the constitutional document, offering document and service provider agreements will need to be amended to comply with Irish law. The CBI must be notified once the non-Irish fund has de-registered in its home domicile.

# Advantages of re-domiciliation

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The existing corporate entity is retained;

The non-Irish fund's performance track record will be preserved through the process of continuation;

As the non-Irish fund is re-registered by way of continuation the need to create a new fund is eliminated (potentially, no taxable event for investors);

The re-domiciliation procedure does not effect existing contracts to which the non-Irish fund is party (although amendments are likely); and

The re-domiciliation procedure does not require a general meeting of the shareholders of the ICAV in Ireland.

# Conversions of Irish Investment Company

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Conversions allow existing funds take advantage of legal provisions unique to ICAVs, e.g.

- Separate accounts at sub-fund level;
- No requirement for AGMs;
- Eligible to “check the box”;
- No need for investor approval for minor amendments to the I.O.I.; and
- Exemption from risk spreading rules.

# How to Convert an existing Irish Investment Company to an ICAV?

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- ✓ Constitution must provide for potential conversion to an ICAV;
- ✓ If not, the Constitution must be amended to permit this; and
- ✓ Special Resolution required.

# Incorporation Document

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- ❑ New constitutional document required → I.O.I.
- ❑ Replaces Constitution and certificate of incorporation on conversion

# Conversion Application

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Submit an application to CBI with:

- Form AR2 – Conversion from an investment company to an ICAV;
- A certified copy of the Memorandum and Articles of Association;
- A certified copy of the I.O.I. in respect of the proposed ICAV;
- A copy of the certificate of incorporation;
- A document listing the details of the directors, secretary and registered office;
- A statutory declaration of directors (not more than 28 days before application date);
- A declaration of solvency from a director;
- A schedule of charges or security interest created or granted by an investment company;
- A description of any proposed change to the name of the ICAV, where applicable; and
- A statutory declaration of compliance by a director or solicitor on behalf of the investment company with the above requirements.



# Conversion Process

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CBI will issue the following on receiving the application;

- A notice of conversion published in the official Irish gazette;
- A registration order;
- Certificate of registration; and
- Enter in a register details of charges/security interests.

Once the certificate of registration has been issued, the investment company must apply to the Irish Registrar of Companies to be de-registered as an investment company with the effect from the date of registration as an ICAV.

**Length of conversion process** – approximately 6-8 weeks

# Final Step – Authorisation of the ICAV

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## UCITS authorization:

- From the date of registration, the fund will become an ICAV and will be authorised to carry on business as an ICAV
- UCITS continue to be authorised under the UCITS Regulations

## AIFs authorisation:

- From the date of registration, the fund will become an ICAV and will be authorised to carry on business as an ICAV
- 24 hour process once CBI has reviewed and confirmed conversion application is clear of comment



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# 5. Comparisons with other Investment Structures

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# Fund Structures in Ireland

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The ICAV sits alongside other regulated fund structures in Ireland:

- ✓ **Variable Capital Company (VCC)**

- Companies Act 2014

- ✓ **Unit Trusts**

- Unit Trust Act 1990

- ✓ **Common Contractual Funds (CCF)**

- Companies Investment Funds Miscellaneous Provisions Act 2005

- ✓ **Investment Limited Partnership (ILP)**

- Investment Limited Partnership Act 1994

**ICAV has replaced VCC as structure of choice**

# ICAV v VCC

|   | ICAV                              | VCC                        |
|---|-----------------------------------|----------------------------|
| <b>Legislation</b>                            | ICAV Act 2015                     | Companies Act 2014         |
| <b>Separate management company</b>            | Optional                          | Optional                   |
| <b>Irish tax transparency</b>                 | No                                | No                         |
| <b>Eligible for “Check the Box”</b>           | Yes                               | No                         |
| <b>Financial statements on sub-fund basis</b> | Yes                               | No                         |
| <b>Umbrella sub-funds</b>                     | Yes                               | Yes                        |
| <b>Amending constitutional documents</b>      | Requires depositary certification | Requires investor approval |
| <b>AIFs and UCITS</b>                         | Yes                               | Yes                        |
| <b>Open-ended and closed-ended</b>            | Yes                               | Yes                        |
| <b>Self managed</b>                           | Yes                               | Yes                        |
| <b>Risk spreading obligation</b>              | No                                | Required                   |

# ICAV v Unit Trust

|   | ICAV                              | Unit Trust                     |
|---|-----------------------------------|--------------------------------|
| <b>Legislation</b>                            | ICAV Act 2015                     | Unit Trust Act 1990            |
| <b>Separate Management Company</b>            | Optional                          | Required                       |
| <b>Irish Tax Transparency</b>                 | No                                | No                             |
| <b>Eligible for “Check the Box”</b>           | Yes                               | Yes                            |
| <b>Financial statements on sub-fund basis</b> | Yes                               | Yes                            |
| <b>Umbrella sub-funds</b>                     | Yes                               | Yes                            |
| <b>Requirement for AGM</b>                    | Optional                          | No                             |
| <b>Amending constitutional documents</b>      | Requires depositary certification | Requires trustee certification |
| <b>AIFs and UCITS</b>                         | Yes                               | Yes                            |
| <b>Open-ended</b>                             | Yes                               | Yes                            |
| <b>Closed-ended</b>                           | Yes                               | Yes                            |
| <b>Risk spreading obligation</b>              | No                                | No                             |

# ICAV v CCF

|   | ICAV                              | CCF   |
|---|-----------------------------------|---|
| <b>Legislation</b>                            | ICAV Act 2015                     | Investment Funds, Companies and Miscellaneous Provisions Act 2005 |
| <b>Separate Management Company</b>            | Optional                          | Required  |
| <b>Eligible for “Check the Box”</b>           | Yes                               | Yes   |
| <b>Irish Tax Transparency</b>                 | No                                | Yes   |
| <b>Financial statements on sub-fund basis</b> | Yes                               | Yes   |
| <b>Umbrella sub-funds</b>                     | Yes                               | Yes   |
| <b>Requirement for AGM</b>                    | Optional                          | Not permitted   |
| <b>Amending constitutional documents</b>      | Requires depositary certification | Requires custodian/manager approval                               |
| <b>AIFs and UCITS</b>                         | Yes                               | Yes   |
| <b>Open-ended</b>                             | Yes                               | Yes   |
| <b>Closed-ended</b>                           | Yes                               | Yes   |
| <b>Risk spreading obligation</b>              | No                                | No  |

# ICAV v ILP

|   | ICAV                              | ILP                                     |
|---|-----------------------------------|---|
| <b>Legislation</b>                            | ICAV Act 2015                     | Investment Limited Partnership Act 1994 |
| <b>Separate management company</b>            | Optional                          | Required (General Partner)              |
| <b>Irish Tax Transparency</b>                 | No                                | Yes                                     |
| <b>Eligible for “Check the Box”</b>           | Yes                               | Yes                                     |
| <b>Financial statements on sub-fund basis</b> | Yes                               | No                                      |
| <b>Umbrella sub-funds</b>                     | Yes                               | Yes                                     |
| <b>Requirement for AGM</b>                    | Optional                          | No                                      |
| <b>Amending constitutional documents</b>      | Requires depository certification | Investor approval required              |
| <b>AIFs and UCITS</b>                         | Yes                               | No – AIFs only                          |
| <b>Open-ended</b>                             | Yes                               | Yes                                     |
| <b>Closed-ended</b>                           | Yes                               | Yes                                     |
| <b>Risk spreading obligation</b>              | No                                | No                                      |



# Comparison Overview

|  | ICAV                              | VCC                        | Unit Trust            | CCF                                 | ILP                        |
|--|-----------------------------------|----------------------------|-----------------------|-------------------------------------|----------------------------|
| Requirement for AGM                    | Optional                          | Required                   | N/A                   | Required                            | Required                   |
| Amending constitutional documents      | Requires depository certification | Requires investor approval | Requires CBI approval | Requires custodian/manager approval | Investor approval required |
| AIFs and UCITS                         | ✓                                 | ✓                          | ✓                     | ✓                                   | X                          |
| Risk spreading                         | N/A                               | Required                   | N/A                   | N/A                                 | N/A                        |
| Irish Tax Transparency                 | X                                 | X                          | X                     | ✓                                   | ✓                          |
| Eligible for 'check the box'           | ✓                                 | X                          | ✓                     | ✓                                   | ✓                          |
| Separate management company            | Optional                          | Optional                   | Required              | Required                            | Required                   |
| Open-ended                             | ✓                                 | ✓                          | ✓                     | ✓                                   | ✓                          |
| Closed-ended                           | ✓                                 | ✓                          | ✓                     | ✓                                   | ✓                          |
| Umbrella sub-funds                     | ✓                                 | ✓                          | ✓                     | ✓                                   | ✓                          |
| Financial statements on sub-fund basis | ✓                                 | X                          | ✓                     | ✓                                   | ✓                          |



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# 6. Regulatory Authorisations

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# Role of the CBI

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CBI is the national regulatory authority in Ireland under:

- Central Bank Acts
- UCITS Regulations
- AIFMD Regulations

ICAVs regulated similarly to other funds by the CBI

However, the CBI acts as both regulator and also as the incorporating, authorising and reporting body for ICAVs

# Authorisation of UCITS

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Principle documents reviewed in advance of the authorisation:

- Prospectus and sub-fund supplements;
- Risk management process; and
- Depositary agreement.

Other documents filed on day of authorisation:

- Investment management agreement;
- Distribution agreement; and
- Administration agreement.

A UCITS is authorised once the fund documents are cleared of comment and the prospectus and signed documents are filed with the CBI.

# Post Authorisation

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Amendments to documents requiring review by the CBI should be submitted in hard copy.

Amendments to documents previously filed that are not subject for review should be accompanied by the appropriate application UCITS application form to the CBI via email before midday.

| Amendment  | CBI Application Form  | Submission  |
|--|---|---|
| <ul style="list-style-type: none"><li>• Change of Depositary</li><li>• Change of Fund Administrator</li><li>• Change of Management Company</li></ul> | Application for Change of Service Provider Part 1 & Part 2            | Filing to be submitted 6 weeks prior to proposed change becoming effective.<br><br>Executed documents submitted on day of change.   |
| Change/appoint Investment Manager/Investment Advisor   | Investment/Sub-Investment Manager/Adviser Appointment (through ORION) | Filing to be submitted in advance of proposed appointment becoming effective.<br><br>Executed documents submitted on day of change. |

# Self-Managed Investment Company (SMIC)

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Single legal vehicle authorised as both fund (UCITS) and management company

Avoids appointment of separate management company

Minimum capital requirement of €300,000, but:

- can be redeemed from fund once subscriptions above this.

Not subject to additional capital compliance requirements

No employees : directors and two “designated persons”

Must submit a business plan

# Self-Managed Investment Company (SMIC)

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Key managerial functions set out in the business plan:

- Decision making;
- Monitoring compliance;
- Monitoring of investment policy, investment strategies and performance;
- Financial control;
- Internal audit;
- Supervision of delegates;
- Complaints handling; and
- Accounting policies and procedures.

# Post CP86 Management functions

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Capital and Financial Management;

Operational Risk Management;

Fund Risk Management;

Investment Management;

Distribution; and

Regulatory Compliance.



# Self-Managed Investment Company Comparison: UCITS and AIFs

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| UCITS   | AIFs   |
|---|--|
| Self-managed & not appoint a management company                                     | Self-managed & not appoint an AIFM   |
| Responsible for all aspects of managing the fund                                    | Authorised and registered in the same way as UCITS   |
| Minimum capital requirements €300,000   | Minimum capital requirement being the higher of €125,000 and one quarter of its total expenditure taken from its most recent annual accounts |
| If UCITS is structured like a CCF or Unit Trust – must appoint a management company | If AIF is structured like a CCF or Unit Trust – must appoint a management company  |
| May not manage other UCITS  | May not manage other AIFS  |

# Externally Managed Funds

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- Separate company authorised as a management company is appointed
- UCITS management company, AIF management company, AIFM or “Supermanco”
- Most of the delegate oversight is not applicable to externally managed funds but Boards of externally managed funds must:
  - Continue to be responsible for compliance with regulatory obligations;
  - Ensure management company performs delegated tasks; and
  - Receive reports from fund management company (fund performance, distribution developments, risk management, operational and administrative tasks).
- Statutory directors’ duties under Companies Act 2014 or ICAV Act 2015
- Irish funds governance code

# AIFs

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AIFMD introduced a common regulatory regime for AIFs.

Ireland: at the forefront of developments with alternative funds.

AIFs may be established as open-ended, closed-ended or limited liquidity structures and offered for sale to

- Qualifying investors
- Retail investors

# QIAIF

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Regulated investment fund suitable for well-informed and professional investors;

Not subject to any borrowing restrictions and minimal investment limits;

Can be used for the widest range of investment purposes;

Most popular form of AIF in Ireland;

Minimum investment €100,000; and

24 hour authorisation process available.

# RIAIF

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Replaced the previous non-UCITS retail regime;

More flexible framework;

Less investment and eligible asset restrictions than UCITS;

More restrictive than the QIAIF; and

No minimum investment.

# Authorisation of AIFs (1/2)

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## Documents required for authorisation:

- Constitutional documents;
- Prospectus;
- AIFM (Alternative Investment Fund Manager) agreement;
- Administration agreement;
- Depositary agreement;

## Will often also feature:

- Prime brokerage agreement;
- Sub-custodian agreement;
- Investment management agreement; and
- Distribution agreement.

# Authorisation of AIFs (2/2)

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The following conditions must also be met:

- The ICAV is in compliance with the ICAV Act 2015;
- The directors of the ICAV are fit and proper persons with appropriate experience; and
- The name of the ICAV is not misleading (must end with ICAV).

Once approved the CBI issues a written authorisation order.

- 24 hour approval process possible for QIAIFs

# Post Authorisation

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Post Authorisation amendments to funds subject to review should be submitted in hard copy to the CBI.

Amendments to documents previously filed with the CBI not subject to review should be submitted with relevant application form:

- **RIAIFs** by midday via email
- **QIAIFs** by 3pm on date prior to noting via email

Proposed amendments not covered above should complete the following forms:

| QIAIF  | RIAIF  |
|--|--|
| QIAIF Post Authorisation Application Form            | RIAIF Change of Service Provider 1                   |
| QIAIF Change of Service provider                     | RIAIF Change of Service Provider 2                   |
| Appointment of Investment Manager/Investment Advisor | Appointment of Investment Manager/Investment Advisor |



| Structure | Authorisation Process  |
|-----------|--|
| UCITS     | <p>CBI authorisation takes 6-8 weeks. Relevant documents required:</p> <ul style="list-style-type: none"> <li>• CBI application form</li> <li>• Prospectus or Offering Memorandum</li> <li>• Constitutive documents</li> <li>• Investment Management Agreement and Distribution Agreement</li> <li>• Depositary, Administration and Paying Agency Agreements</li> <li>• CBI requires the fund's legal advisors to certify compliance with relevant regulations and file documents with CBI prior to authorization of fund</li> <li>• May also feature UCITS Management Agreement, Investment Advisory Agreement</li> </ul> |
| QIAIFs    | <ul style="list-style-type: none"> <li>• Similar documents as above: but 24 hour authorisation process</li> <li>• Subject to self-certification process</li> <li>• CBI must receive application form before 3pm prior to noting day</li> <li>• Letter of authorization issued by the CBI on following business day</li> </ul>  |
| RIAIFs    | <ul style="list-style-type: none"> <li>• Complete relevant CBI application form and process as UCITS</li> <li>• Draft fund documents (e.g. prospectus, supplements etc.) and service provider agreements (depositary, administrators, AIFM etc)</li> <li>• Draft letters relevant to the application (e.g. letter of application, letter of safekeeping of assets etc.)</li> </ul>   |

# ORION - The CBI's Online Application System

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Since 27 March 2017, the following applications/submissions are made via ORION:

| Structure          | Application/Submissions                                   |
|--------------------|---|
| UCITS/RIAIF        | Sub-fund approval submissions/standalone fund submissions |
| AIFM               | Authorisation & registration submissions                  |
| UCITS              | Management company authorisation submissions              |
| SMIC               | Authorisation submissions                                 |
| Investment Manager | Investment management approval applications               |



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# 7. Tax Treatment of the ICAV

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## Advantages of Domiciling in Ireland

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>Well established legal and regulatory framework</li> </ul>                                       | <ul style="list-style-type: none"> <li>Expertise within alternative funds</li> </ul>   |
| <ul style="list-style-type: none"> <li>co-operative and knowledgeable regulator in the CBI</li> </ul>                                   | <ul style="list-style-type: none"> <li>Leading stock exchange for fund listings</li> </ul>   |
| <ul style="list-style-type: none"> <li>Availability of UCITS &amp; AIFMD pan-European passports</li> </ul>                              | <ul style="list-style-type: none"> <li>Prospering funds industry</li> </ul>  |
| <ul style="list-style-type: none"> <li>Skilled workforce of administrators, legal and tax advisors, auditors and consultants</li> </ul> | <ul style="list-style-type: none"> <li>Wide choice of service providers</li> </ul>   |
| <ul style="list-style-type: none"> <li>Range of fund categories and legal structures</li> </ul>   | <ul style="list-style-type: none"> <li>US Passive Foreign Investment Company does not apply</li> </ul>   |
| <ul style="list-style-type: none"> <li>Favorable tax regime for Irish domiciled funds</li> </ul>  | <ul style="list-style-type: none"> <li>66 world-class fund service providers, over 11,000 employees, over 12,300 funds, over €2 trillion in assets (Source: CBI &amp; IFIA)</li> </ul> |

## TAXATION OF FUNDS

- ✓ Irish domiciled funds are exempt from Irish tax on income & gains
- ✓ Not subject to Irish tax on their net asset value
- ✓ Non Irish tax residents may receive distributions from Irish domiciled funds without deduction of any Irish withholding tax
- ✓ No capital duty is payable on the issue of units
- ✓ For Irish tax residents, Irish withholding tax 41% is deducted by funds from distributions on disposals and redemptions of units by Irish tax resident investors
- ✓ Exempt: pension funds, life assurance companies & other Irish domiciled funds
- ✓ Ireland has 73 double taxation agreements (DTAs)
- ✓ DTAs may be accessed by funds or via wholly owned special purpose vehicles (SPVs).

NOTE: Separate provisions applicable to Irish property funds

# ICAV TAXATION ISSUES

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## ICAV TAXATION ISSUES

- Taxable entity for Irish purposes
- General taxation provisions relating to funds apply
- Not subject to Irish tax on their net asset value

# Factors to Consider?

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Converting fund into an ICAV or re-domiciling: tax neutral?

Dependent on particular facts and circumstances

Consideration should be given to whether conversion or re-domiciliation will crystallise taxes or impact investors position

Careful consideration to where “check the box” elections are needed or where the converting/re-domiciling fund changes its “check the box” status

ICAV may elect to be treated as a “pass through” entity for US federal income tax purposes it is in general seen in other jurisdictions as a corporate entity



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# 8. Complex Structures

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# Introduction to Master/Feeder Structures

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Multi-layered structures

Designed to facilitate investment by different investor types

Cater to different preferences

Taxable v non-taxable investors

Transparent v opaque

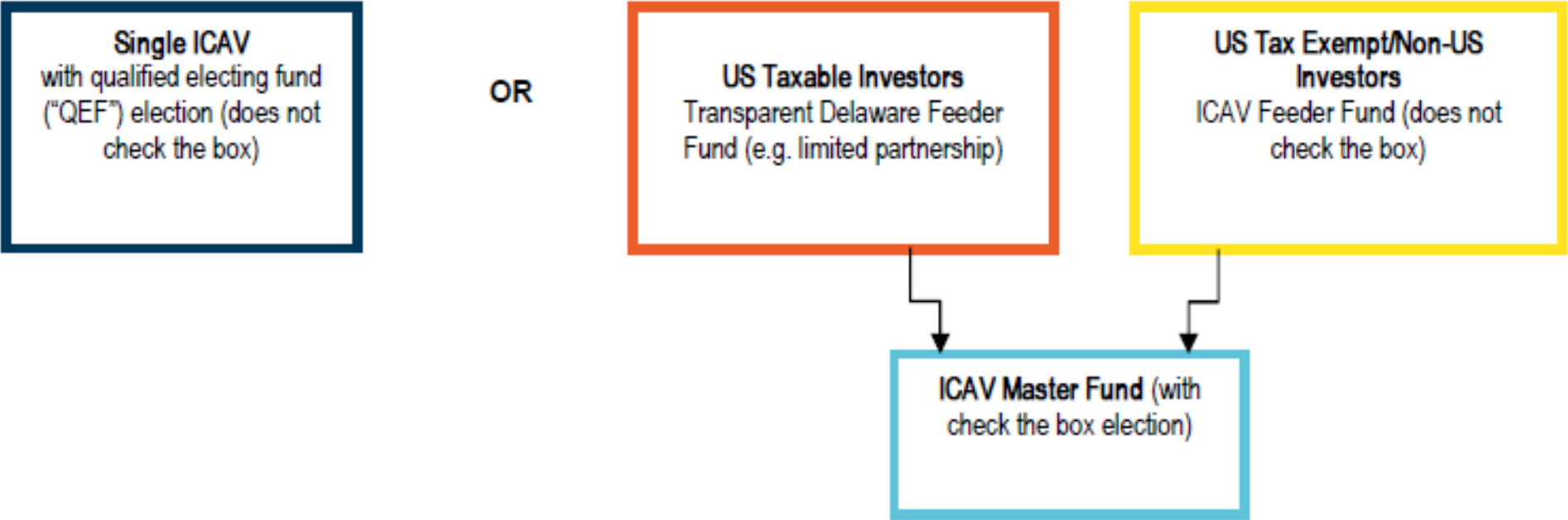
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## ICAV Irish Master Feeder Structure

- ✓ **Facilitating investment by US taxable investors**
- ✓ **Luxembourg SICAV and Cayman exempt company may elect to “check the box” and be treated as a partnership for US tax purposes**
- ✓ **ICAV may also elect to “check the box”**
- ✓ **Enhances attractiveness of Ireland as fund domicile**

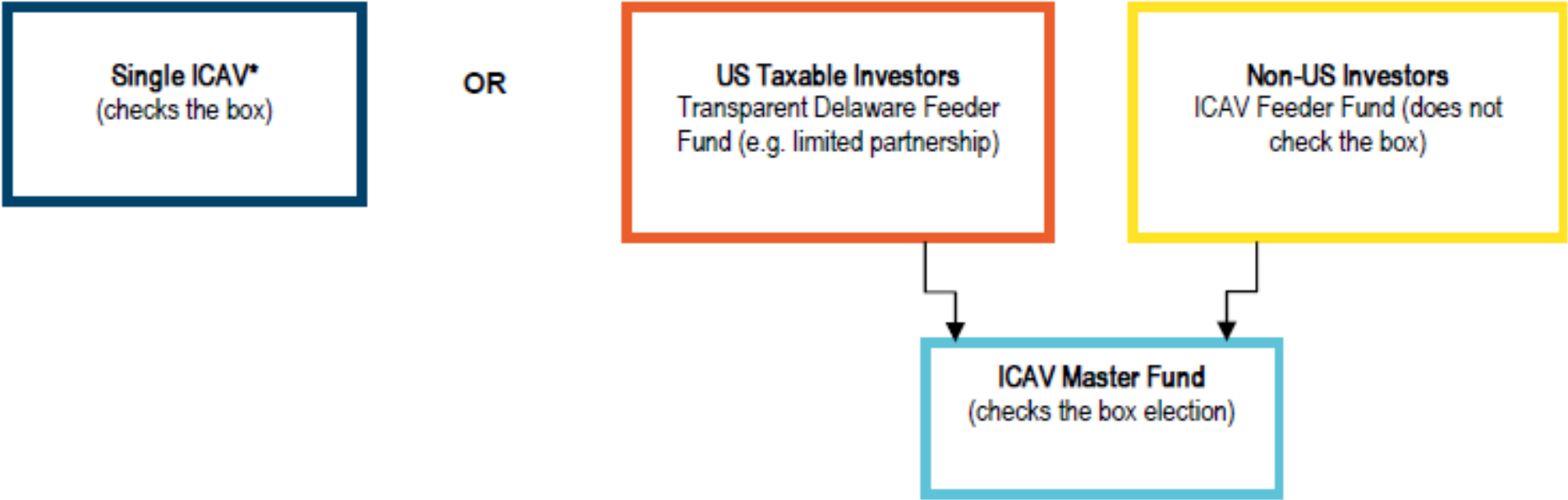
# Master/Feeder Structures

*(a) Combination of US taxable investors, US tax exempt investors and investors from the rest of the world*



# Master/Feeder Structures

*(b) Combination of US taxable investors and investors from the rest of the world*



# Irish Master/Feeder Structure

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| Structure                                   |
|---|
| Pre ICAV - Master Fund = unit trust         |
| Post ICAV – Master Fund = unit trust / ICAV |
| Pre ICAV – Feeder Fund = VCC                |
| Post ICAV – Feeder Fund = VCC / ICAV        |



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# 9. Revocation

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# Revocation

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Application must be made to the CBI prior to wind-up – (if liquidator appointed these need separate accounts)

Documents to be filed with the CBI:

1. Letter from the Directors seeking authorisation for revocation;
2. Zero NAV Accounts;
3. Letter from the fund seeking exemption to produce audited accounts (if liquidator appointed);  
and
4. Confirmation that the regulatory fee has been paid.

**Note:** until authorisation is revoked by the CBI the fund is required to pay the annual regulatory fee.



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# 10. Winding-up

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# Steps in winding-up an ICAV

| Procedure  |   |
|--|---|
| Directors board meeting;                                     | Irish Oifigiuil publication;  |
| Form W1 – declaration of solvency;                           | Revenue clearance;  |
| Report of independent person;                                | Final distribution of funds (if applicable);                            |
| Auditors statement of total assets an liabilities;           | W4.1 - Liquidators accounts of acts and dealings;                       |
| Form W2 - Winding-up and appointment of liquidator;          | W4.2 – liquidators statement of proceedings and position of winding-up; |
| W3.1 - appointment of liquidator;                            | Form W5 – liquidators final statement of account;                       |
| Realisation of assets and payment to creditors;              | Form W6 – schedule and return final meeting of shareholders; and        |
| Formal confirmation from the CBI that the ICAV is dissolved. |   |



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# 11. Case Studies

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# Case Study 1 – GQG Global UCITS ICAV

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UCITS

Separate Management Company

US investment manager

Targeting European investors

Passported and registered for international distribution

# Case Study 2 – Manulife Asset Management UCITS ICAV

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UCITS

Self-managed

Multiple investment managers

Passported to European jurisdictions for sales

# Case Study 3 – Strategos QIAIF Feeder Fund plc / Strategos Master Fund ICAV

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Background: re-domiciliation from Cayman

Master/Feeder structure

QIAIFs

ICAV is a master fund

Multiple feeders

- Cayman
- Delaware
- Ireland (plc)

Targets investors globally



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# 12. Issues Identified

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# Issues

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Irish directors

Foreign recognition

Segregated liability

Change of name

Taxation: taxable events

Taxation: country sub-fund elections

Time period for conversions



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# 13. Questions?

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# 14. Conclusion

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# Conclusion

## The ICAV

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- ✓ New form of investment vehicle designed to streamline processes of establishment & administration of funds in Ireland
- ✓ Encourage US investors
- ✓ Development of the ICAV has reinforced Ireland's reputation as a key domicile for the establishment & operation of funds
- ✓ Has quickly become the vehicle of choice for Irish funds



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Mark is a Partner and Head of Asset Management and Funds in Clerkin Lynch LLP. He has in excess of 15 years experience as a solicitor advising on the establishment, launch and ongoing operations of investment funds.

His experience covers both funds authorised as UCITS and under the AIFMD. In addition to Dublin, he has worked in some of the other key international fund domiciles including the Cayman Islands and Luxembourg.

ESG is one of his particular areas of focus.