ICAV Mergers

General Introduction and Background

The Irish Collective Asset-management Vehicle ("**ICAV**"), Ireland's newest investment fund vehicle, was introduced in March 2015. The *Irish Collective Asset-management Vehicle Act 2015* (the "**ICAV Act**") is the culmination of a joint government and industry project to make available to promoters a legal framework for a corporate fund vehicle that is specifically designed for investment funds. Matheson partners were extensively involved in the industry project to introduce the ICAV, the introduction of which increases the range of available fund vehicles in Ireland, satisfying both promoter and investor appetite, and reflecting a practical balance between organisational and operational flexibility on the one hand and investor protection on the other.

The ICAV is a corporate vehicle designed for Irish investment funds, providing a tailor-made solution for both UCITS and alternative investment funds ("**AIFs**"). Conceived specifically with the needs of investment funds in mind, the ICAV, as a bespoke investment fund corporate vehicle, has the advantage that it is not impacted by amendments to certain pieces of European and domestic company legislation that are targeted at trading companies rather than investment funds. For further information on the key features and benefits of the ICAV, please refer to our factsheet available at www.matheson.com.

ICAV Mergers

The merger regime under the UCITS Regulations (the "**UCITS Merger Regime**") applies to mergers of UCITS ICAVs with other UCITS. For ICAVs authorised as AIFs, the ICAV Act provides that a non-UCITS ICAV may merge with any other collective investment scheme subject to conditions imposed by the Central Bank (the "**Central Bank**"). Therefore, the Central Bank's conditions for mergers of AIFs with other investment funds (the "**AIF Merger Regime**") will also apply to mergers of ICAV AIFs.

UCITS Merger Regime – Practical Steps

Mergers of UCITS established as ICAVs are subject to prior authorisation by the Central Bank. In the case of a merger of a UCITS, the merging ICAV must provide the information set out below to the Central Bank for the purposes of the merger application.

- The common draft terms of the proposed merger approved by the management of both the merging ICAV and of the UCITS into which it is to merge (the "**receiving fund**"). The terms must set out the background to, and rationale for, the proposed merger, how assets and liabilities will be valued at the time of the merger, the expected shareholder impact and proposed timeline.

- An up-to-date version of the prospectus and key investor information document ("**KIID**") of the receiving fund.

- Confirmation from the depositaries to the merging ICAV and receiving fund that they have verified certain matters related to the merger.

- The shareholder communications to be issued by each of the merging ICAV and receiving fund to their respective shareholders.

The Central Bank will then review the submission and let the merging ICAV know within 20 working days whether or not the merger has been authorised. If the Central Bank considers that the submission is not complete, it can request additional information, which may push out this timeline.

Once authorised by the Central Bank, shareholders of both the merging ICAV and receiving fund must be notified of the proposed merger, which is also put to the shareholders of the merging ICAV for approval. Either the auditors, or one of the depositaries, will be required to validate the valuations and exchange ratio used in the merger, and the report must be made available to shareholders.

In communicating with their respective shareholders, both the merging ICAV and the receiving fund must do so in sufficient detail to enable shareholders to make an informed judgment on the merger. The shareholder communications must set out the background to the merger and the possible shareholder impact, including any material differences in respect of investment policies, costs, reporting and performance. Where relevant, shareholders must be warned that their tax treatment may change. Shareholders must also be informed of the effective date of the merger and of their statutory rights, including the right to obtain additional information or request the various reports of the auditor and / or depositary, and the important right, during a thirty day period commencing from when they are notified of the merger, to request the redemption, or where applicable, conversion, of their shares without charge (other than certain limited costs).

Mergers will require merging ICAV shareholder approval, with a maximum consent threshold of 75% of the votes actually cast by shareholders present or represented at the general meeting of shareholders. Merging fund shareholders who vote against the merger, or who do not vote at all, and who do not subsequently avail of their redemption or conversion rights, will automatically become shareholders in the receiving fund on the effective date of the merger.

AIF Merger Regime – Practical Steps

Where an AIF is the merging fund, a merger proposal (the "**Proposal**") must first be submitted to the Central Bank. The Proposal must set out how the requirements of the AIF Merger Regime will be satisfied. It is at the discretion of the Central Bank to reject the Proposal, in which case the merger cannot proceed.

The AIF Merger Regime distinguishes between Retail Investor AIFs ("**RIAIF**") and QIAIFs. In the case of RIAIFs, the AIF Merger Regime requires, at a minimum, that the receiving fund must be located in one of a number of prescribed jurisdictions including a Member State of the European Union (the "**EU**"), a Member State of the European Economic Area, Guernsey, Jersey or the Isle of Man. RIAIFs may be permitted to merge with receiving investment funds located in other jurisdictions on a case-by-case basis. The receiving fund must not impose restrictions on subscriptions or redemptions that are material different to the merging RIAIF, including the categories of target shareholders.

In the case of both RIAIFs and QIAIFs, the receiving fund must be authorised and supervised by the relevant competent authority in the jurisdiction in which it is located. Shareholders of the merging AIF must receive full disclosure of all material facts and considerations relevant to the proposed merger, including the following:

- the background to, and rationale for, the Proposal;
- a description of the receiving fund, which must be sufficient to enable shareholders to make an informed judgement of the proposal being put to them. In particular, this description must highlight any material differences by comparison with the merging AIF;
- the procedures to be adopted for the transfer of assets;
- the alternatives for shareholders who do not wish to become holders of units in the receiving fund. These shareholders must be offered an opportunity to redeem their holdings in cash prior to the amalgamation taking effect;
- the regulatory status of the receiving fund. It must be made clear, where relevant, that the receiving fund has not been authorised by and will not be supervised by the Central Bank;
- details on how shareholders, if they so require, may obtain the prospectus, constitutional document and financial statements of the receiving investment fund; all relevant costs including, where applicable, costs associated with the winding-up of the merging fund and who will bear these costs;
- other material information concerning, inter alia, tax treatment and details of the service providers to the receiving fund including their relationship, if any, with the service providers to the merging fund; and
- for QIAIFs, if the receiving fund does not provide redemption facilities at least as frequently as the merging fund, this matter must be highlighted in a prominent position at the beginning of the circular.

Prior to notification of the merger to shareholders, the depositary of the merging ICAV must confirm to the Central Bank that it has no objection to the Proposal or to it being put to shareholders for approval.

The Proposal must then be approved by at least 75% of the votes cast at a general meeting and the votes in favour must represent more than half of the units in issue. All shareholders must be notified of the outcome of the general meeting and, in the event that the resolution is passed, they must be advised of the procedures and deadlines by which they must submit their redemption request, if they so wish. A reasonable notification period following the general meeting must be provided to shareholders in open-ended RIAIFs and open-ended RIAIFs with limited liquidity in order to consider and submit a redemption request.

Comment

The introduction of the ICAV provides an additional option for promoters, complementing the existing range of Irish fund vehicles available. This does not result in any changes for established investment companies which will continue to co-exist with the ICAV. Since the introduction of the legislation, the ICAV has become the vehicle of choice for new UCITS and AIF launches in Europe. The straightforward merger process utilising an ICAV as the receiving fund will assist existing investment funds wishing to consolidate, affording them the additional benefits of the ICAV.

Please get in touch with your usual Asset Management and Investment Funds Group contact, or any of the contacts listed in this publication, should you require further information in relation to the ICAV.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team can be accessed at www.matheson.com.

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