

Qualifying Investor AIFs (QIAIFs) An overview

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1. Introduction

This Note provides an overview of the regulatory and tax environment for qualifying investor alternative investment funds (“QIAIFs”) and their service providers in Ireland.

1.1 AIFMD

The Alternative Investment Fund Managers Directive¹ (“AIFMD”) was also transposed into Irish law.

AIFMD regulates the managers (“AIFMs”) of alternative investment funds (“AIFs”) which, in essence, are all Funds that are not UCITS.

AIFMD enables AIFs authorised in the European Economic Area (“EEA”) to be sold to professional investors across the EEA under a marketing passport. Certain EEA member states might also permit such AIFs to be sold to other categories of investors, including retail investors.

1.2 Regulatory Authority – the Central Bank of Ireland

The Central Bank of Ireland (“Central Bank”) is the sole regulatory authority in the Irish financial system.

It regulates banks, building societies, providers of investment services as well as Euronext Dublin and futures and options exchanges.

The Central Bank is the competent authority in Ireland for the purposes of the regulation of AIFs and the supervisory authority for the authorisation and regulation of fund service providers including AIFMs, other investment managers, administrators and depositaries.

The Central Bank has taken a balanced, pragmatic and dynamic approach to its regulatory duties - this has enabled a full range of Irish Fund products to be developed and offered and, as a result, Ireland is recognised globally as one of the leading jurisdictions in which to establish and administer Funds.

(1) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

2. QIAIFS

2.1 Overview

A QIAIF is a category given to Funds that is designed for qualified or 'sophisticated' investors. A QIAIF has very few investment restrictions and enjoys flexible investment strategies. QIAIFs are not bound by the same regulatory limits relating to borrowing and leverage nor do they need to satisfy any eligible asset requirements which attach to UCITS.

2.2 Authorisation process

The Central Bank operates a 24 hour fast track authorisation process which is subject to certain conditions and confirmations provided by the directors/AIFM and legal advisers of the QIAIF².

The Central Bank will issue confirmation of authorisation within 24 hours of receiving a complete QIAIF authorisation application.

A QIAIF authorisation application must include

- fully completed Central Bank application forms (in respect to each document provided)
- dated offering documents
- certified copies of the constitutive documents and
- signed and dated material contracts (i.e. depositary agreement, administration agreement, AIFM agreement, prime brokerage documentation (if relevant), investment management agreement (if there is a separate investment manager to the AIFM) and distribution agreement (if relevant)).

(2) All offering documents are subject to review by the Central Bank and may be spot checked at any time after authorisation or approval of a fund.

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are set against a bright blue sky with scattered white clouds. The perspective creates a sense of height and architectural scale.

A certification as to the accuracy and completeness of the contents of the Central Bank application form is required, as well as confirmation that the documentation complies with Central Bank requirements, as well as certain ancillary documents depending on the legal structure utilised.

The Central Bank encourages applicants to discuss novel or innovative proposals in advance of making formal applications in order to ensure that authorisations are not delayed. Certain types of QIAIFs may require a pre-submission – notably QIAIFs seeking to invest in Irish real estate and QIAIFs seeking to gain direct or indirect exposure to digital assets (although certain thresholds apply, below which no pre-submission is required).

Service providers, including the AIFM, investment manager, administrator and depositary, as well as the directors must be approved or deemed acceptable by the Central Bank before the application for authorisation can be made. The Central Bank encourages new QIAIF applications to be made only when other parties – in particular, the AIFM or the investment manager - have been approved or cleared to act to avoid delays.

The Central Bank approves additional sub-funds of umbrella QIAIFs within 24 hours, as well as other relevant updates to material contracts or other agreements.

2.3 Minimum initial investment

A QIAIF must impose a minimum initial investment amount of €100,000 (or its equivalent in another currency). The minimum initial investment may be spread among various sub-funds of an umbrella QIAIF. Institutions are not permitted to aggregate amounts of less than €100,000 for individual investors.

2.4 Investor eligibility

A QIAIF may only accept investment from a “Qualifying Investor”, which is any of the following:

- an investor who is a professional client under MiFID; or
- an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF; or
- an investor who certifies that they are an informed investor by providing the following:
 - confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
 - confirmation (in writing) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of assets of the same kind as the assets of the QIAIF.

There are certain derogations from these requirements for investors who are connected with the QIAIF such as the investment manager and its employees involved in the management of the QIAIF.

2.5 Master-Feeders

Master-feeders are a popular structure for managers, in particular hedge fund managers, seeking to raise capital from US taxable investors in addition to EU investors.

For a variety of tax and regulatory reasons it is not advisable to commingle US taxable investors and non-US taxable investors in the same Fund.

If a manager is expecting to launch with US taxable investors from the outset, it is common to establish a QIAIF ICAV feeder (for EU, non-US and US tax-exempt investors), a limited partnership feeder for US taxable investors, usually established in Delaware (although this could be an ILP), and a master QIAIF (usually an ICAV although an ILP could also be used).

An ICAV can elect to be treated as a partnership for US tax purposes and such an election makes it a popular vehicle for use as a master fund. An ILP is a tax transparent limited partnership which also makes it a viable option for use as a master fund. The use of a transparent master fund combined with a limited partnership feeder and a “blocker” corporate feeder, provides for the optimal tax treatment for US investors, both taxable and tax exempt.

For managers launching a fund without investment from US taxable investors, it is worth considering the establishment of a master-feeder in order to “future-proof” the Fund structure. If a Delaware feeder is not required for US taxable investors from the outset, a “single-legged” master-feeder can be established which consists of a feeder QIAIF and a master QIAIF. Such a structure can provide the flexibility of “bolting on” a US feeder in the future, preserving the optionality of future investment from US taxable investors without any impact on the existing investors or the existing Fund structure.

On the assumption that an authorised EU AIFM is appointed, a feeder QIAIF can be marketed to professional investors in the EU on a passported basis.

A feeder QIAIF may also feed into a non-Irish master fund subject to a general restriction on investment of more than 50% of net assets in any one unregulated investment fund.

An unregulated fund is any fund other than a fund which is authorised in Ireland or in another jurisdiction which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing QIAIFs. The Central Bank would consider a Cayman Islands Monetary Authority (CIMA) registered mutual fund to be unregulated for such purposes.

The Central Bank might consider a derogation to the 50% restriction outlined above upon receipt of a specific application where:

- The feeder QIAIF (or relevant sub-fund) has a minimum subscription of at least €500,000 or its equivalent in other currencies; and
- The offering documents for the feeder QIAIF contain detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the QIAIF and its AIFM but which do not apply to the unregulated master fund and its management company.

In accordance with AIFMD, if an EU feeder fund (including a feeder QIAIF) invests 85% or more of its assets into a non-EU master fund, that EU feeder fund cannot be marketed to professional investors in the EU on a passported basis, even where an authorised EU AIFM has been appointed.

2.6 Standalone or Umbrella Fund

A QIAIF may be established as a standalone Fund or an umbrella Fund. An umbrella Fund can have any number of sub-funds. Each sub-fund is treated as a separate collective investment scheme with a separate pool of assets and may pursue different investment objectives and policies. The assets and liabilities of each sub-fund are legally segregated from those of each other sub-fund and the umbrella Fund itself.

Standalone Funds and sub-funds of umbrella Funds may establish different classes of ownership interests. Such classes do not represent a separate pool of assets but can have different functional currencies, fee structures, liquidity profiles and can be targeted to different types of investors (e.g. restricted to employees or friends and family of the AIFM or investment manager).

3. Fund structures

A QIAIF can be established as:

- an Irish Collective Asset-management Vehicle (“ICAV”);
- an investment limited partnership (“ILP”);
- a public limited company;
- a variable capital company (“VCC”);
- a unit trust; or
- a common contractual fund (“CCF”).

3.1 Irish Collective Asset-management Vehicles

The ICAV is the vehicle of choice for Funds established in Ireland.

The ICAV is designed solely for use as a Fund and, as a result, is not required to comply with Irish or EU general company law, much of which is not appropriate and/or administratively burdensome for a Fund.

For example, an ICAV can dispense with the requirement to hold an annual general meeting, while prior investor approval for changes to an ICAV’s instrument of incorporation is not required provided that (a) the ICAV’s depositary has certified that the change is not prejudicial to investors’ interests (b) the change is not of a type that the Central Bank requires to be approved by the members.

In addition to its role with regards to the authorisation of QIAIFs, the Central Bank is also the competent authority for the incorporation of an ICAV.

Importantly, an ICAV is able to “check-the-box” to be treated as a partnership for US tax purposes. As a result, master-feeder ICAV structures are very attractive to managers, in particular hedge fund managers, seeking to raise capital from US investors.

3.2 Investment Limited Partnerships

A QIAIF may be established as an ILP, which is a common law limited partnership.

An ILP is created by a limited partnership agreement (“LPA”) entered into by one or more general partner(s) and any number of limited partners (LPs). The general partner will be an entity controlled by the promoter of the ILP and has unlimited liability for the debts and obligations of the ILP.

The investors are LPs, which means that the liability of the investors in an ILP is limited to the commitment amount of investor to the ILP, so long as the LP does not take part in the management of the ILP.

In an ILP, all of the assets and liabilities belong jointly to the partners in the proportions agreed in the LPA. Similarly, the profits are directly owned by the partners.

The ILP is a tax-transparent vehicle and the income and gains accruing to an ILP are treated as accruing to each investor in proportion to interests in the ILP held by that investor. Where the ILP invests in Irish assets, certain Irish tax consequences may arise for the ILP or its investors.

Recent changes have modernised certain aspects of Irish partnership law, for example, by

- including additional “safe harbour” actions which expressly permit an LP to take certain actions (such as taking part in advisory committees in respect of the fund’s investments, or voting on a change to the LPA) without the LP losing its limited liability status;
- confirming that, other than as provided for in the LPA, an LP is not liable to make any capital contribution to the ILP (reinforcing the concept that investors should not be liable for any partnership debts or obligations beyond their committed capital); and

- introducing new provisions to make it easier to replace a GP, including the creation of a statutory novation of assets and liabilities when a GP is substituted, with these vesting in the incoming GP without the need for further formalities

3.3 Unit Trusts

A QIAIF may be established as a unit trust, which is a historically popular structure for Asian investors, in particular Japan and South Korea due to its simple structure. i.e. these are highly liquid funds and you do not need to have a lot of time, knowledge or expertise to start investing in a unit trust. However, in Ireland these are rarely used, when used this type of structure would typically only be used for pension fund investors as it is a tax driven structure.

A unit trust does not have separate legal personality and is created pursuant to a trust deed entered into between the depositary and the AIFM.

The AIFM enters into contracts on behalf of the unit trust. However, unit trusts are not allowed to borrow, thus reducing investor returns.

Investors in a unit trust are referred to as unitholders.

The depositary is the legal owner of assets of the unit trust but holds such assets as trustee on trust for the benefit of the unitholders.

The liability of unitholders is limited under the trust deed to the amount contributed or agreed to be contributed for units.

Further, it should be noted that investing in unit trusts typically incurs higher fees than other investment instruments like exchange traded funds. This is because costs such as management, marketing, accounting and switching costs will need to be factored in.

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, set against a bright blue sky with scattered white clouds. The buildings are positioned on the left side of the page, creating a sense of height and scale.

3.4 Investment Companies

A QIAIF may be established as a public limited company or a VCC.

Prior to the introduction of the ICAV, the investment company or a VCC was the most common vehicle chosen for open and closed ended QIAIFs but it is now rarely used. The investment company can be structured as either an umbrella or single corporate entity, yet remaining ring-fenced from each other. Using a corporate structure such as a VCC can facilitate better access to double taxation treaties.

With its own legal personality and board of directors, a VCC can act as the management entity without the need to set up or engage a separate management company. Such an entity would be known as an internally managed AIF. The obligations imposed on such entities are becoming increasingly onerous. VCCs who appoint a management company do not need to meet the operational or capital adequacy requirements which apply to management companies

3.5 Common Contractual Funds

A CCF is specifically developed to enable asset managers and asset owners to pool their investments (primarily in the context of pension fund assets) in a tax efficient manner into one entity.

For such pooling to successfully take place, it is imperative

- that the pooling vehicle is tax transparent (i.e., that the vehicle's income and gains are treated as arising or occurring to the unitholders or investors and not to the vehicle itself) in order to ensure that the tax status of the pension schemes is not prejudiced, and
- that the efficiencies of a pooling vehicle are not negated by detrimental tax treatment.

CCFs are, under Irish law, tax transparent vehicles which may be established for such purpose.

CCFs are pooling vehicles established under the law of contract namely by a deed of constitution to which an AIFM and depositary will be party.

A CCF does not have separate legal personality.

Each investor in the CCF is deemed to hold an undivided co-ownership interest in the underlying investments of the CCF as a tenant in commons with other investors. Units issued in a CCF are not shares but serve to determine the proportion of the underlying investment to which the investor is beneficially entitled.

The depositary is a party to the deed of constitution, but the depositary does not act as a trustee of a CCF. The assets of the CCF are held by the Depositary pursuant to a separate depositary agreement.

The liability of unitholders is limited under the deed of constitution to the amount contributed or agreed to be contributed for units.

The deed of constitution may be drafted to provide that income is distributed on an annual basis so as not to prejudice the tax transparency of the vehicle in certain jurisdictions.

4. Launch Timing and Process

The Central Bank will issue confirmation of authorisation within 24 hours of receiving a complete QIAIF authorisation application.

The overall timeline for establishing a new QIAIF depends on a number of factors, including:

- whether the proposed AIFM, investment manager and other service providers are already approved by the Central Bank;
- how quickly the fitness and probity requirements imposed on each of the proposed directors has been completed and satisfied;
- the complexity of the QIAIF;
- response times from fund service providers and onboarding; and
- whether the Fund is of a type in respect of which the Central Bank requires a pre-submission (see section 2.2 above).

A QIAIF can be launched in 10 to 12 weeks but in practice it is usually around 5 to 6 months from start to finish.

The following is an outline of the main steps involved in the establishment of a QIAIF:

- Completion of new fund questionnaire;
- Confirmation of legal structure;
- Confirmation of service providers (including the Fund's proposed directors);
- Establish the chosen legal structure of the Fund;
- If required, prior approval of entities providing services is obtained from Central Bank (i.e., AIFM and investment manager);
- Completion and submission of the director's individual questionnaires (submitted via the Central Bank's online portal);
- Offering documents drafted by legal counsel and agreed between various stakeholders;

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- A low-angle, upward-looking photograph of several modern glass skyscrapers. The buildings are dark blue and reflect the sky. The sky is bright blue with scattered white clouds. The perspective is from the ground looking up, making the buildings appear to converge towards the top of the frame.
- Negotiation and finalisation of material contracts;
 - Pre-submission to the Central Bank (if required);
 - All necessary Central Bank application forms and ancillary documents prepared by legal counsel;
 - Launch board meeting;
 - Legal counsel files a complete QIAIF authorisation application with the Central Bank prior to 5pm on a business day;
 - The Central Bank furnishes a letter confirming authorisation of the QIAIF and approval of the sub-fund(s) (if any) by close of business on the following business day;
 - Launch can take place the following business day (although there is frequently a period of capital raising following authorisation and prior to actual launch of the QIAIF); and
 - The Central Bank issues director approval letters confirming approval to act as a director of the Fund. This is usually received within 1-2 business day of the Fund being authorised.

5. Service Providers and Directors

5.1 Depositary

Under the AIFMD, the AIFM along with the ICAV is required to appoint a single Irish depositary to the Fund. Any depositary appointed to the Fund must be approved by the Central Bank. This is to create a higher safeguarding mechanism for investors.

The main duties of the depositary include:

- Safekeeping the assets of the QIAIF;
- Cash flow monitoring;
- Ensuring that the sale, issue, redemption (if relevant) and calculation of shares or units effected by or on behalf of a QIAIF are carried out in accordance with the law pursuant to which the QIAIF is authorised, the Central Bank's regulations and the QIAIF's constitutive and offering documents; and
- Oversight responsibility.

5.2 Administrator

An Irish administrator is required to be appointed. The administrator must be approved by the Central Bank.

The main duties of the administrator include:

- Monitor and manage fund account operations;
- Calculating the net asset value and net asset value per share, updating/confirmation of the prices of the underlying securities and the calculation of income and expenses accruals;
- Maintaining and updating all accounting records (ie records of income, expenses, assets and liabilities; semi-annual and annual accounts);

- Maintaining the partner unitholder/shareholder register; and
- Originating all correspondence and dividends/income distributions to partners, unitholders/shareholders.

5.3 Investment manager

If a separate investment manager is to be appointed in addition to the AIF and if the proposed investment manager is not an Irish entity already approved by the Central Bank (and they do not appear on the relevant EU passporting register), the investment manager must first be cleared by the Central Bank to act in advance of the authorisation/approval of the Fund occurs.

This also applies in respect of non-EU applicants, the Central Bank must be satisfied that the firm is appropriately regulated in its home state and subject to prudential regulation by its home competent authority. The applicant must complete an online application and submit information concerning the applicant's expertise, integrity and adequacy of financial resources.

If an investment manager falls into any of the following categories they will not be subject to any additional reviews:

- A UCITS management company authorised under the UCITS Directive;
- An investment firm authorised under MiFID to provide portfolio management;
- A credit institution authorised under Directive 2006/48/EC having the approval to provide portfolio management under MiFID; or
- An AIFM authorised under AIFMD.

5.4 AIFM

An AIFM is required to be appointed.

The AIFM may be either

- fully authorised by the Central Bank (or by another EU regulatory authority and passported into Ireland);
- registered/a self-managed fund (this is only available to AIFMs who fall beneath a certain threshold of assets under management EUR 100M); or
- a non-EU investment manager who is designated as an AIFM.

Authorised AIFMs are subject to the full requirements of the AIFMD and are permitted to market the QIAIF across the EU using the AIFMD marketing passport.

A registered/self-managed fund have lighter requirements to stratify given the threshold limitations placed on a registered AIFM. It should be noted that a registered AIFM is not afforded benefits under the AIFMD unless they apply to be fully authorised. Meaning that they are limited to managing their funds in Ireland. They cannot market their funds in other EU jurisdictions nor can they manage other funds.

Additionally, a registered AIFM will still need to comply with certain requirements of the AIFMD such as provisions relating to systemic risk monitoring.

A non-EU investment manager can be designated an AIFM for a QIAIF but would be required to comply with certain of the requirements of AIFMD and the EU marketing passport would not be available. As mentioned above, the proposed non-EU AIFM would need to receive clearance from the Central Bank in advance of its appointment.

5.5 Directors

A minimum of two Irish resident directors is required. However, the Corporate Governance Code for Collective Investment Schemes and Management Companies (the “Code”) published by Irish Funds Industry Association (“Irish Funds”) recommends three directors as a Board’s minimum size. Irish Funds also states that there should be at least one independent director. This independent director is typically also appointed to chair the Board of directors.

There is no maximum number of directors or requirement from an Irish standpoint. However, it is recommended to appoint an odd number of directors, so that there will always be a majority vote.

Appointments to the Board of directors must be approved in advance by the Central Bank and each QIAIF director is required to complete an online individual questionnaire (IQ) in accordance with the Central Bank’s fitness and probity regime (described in further detail below).

Departures from the office of director must be notified to the Central Bank immediately.

The Central Bank operates a Fitness and Probity regime to ensure that office holders and individuals performing specified functions in the Irish financial services industry meet specified standards (the “Standards”) of competence (so the individual has the necessary qualifications, skills and experience) and probity (so the individual is honest, fair and ethical). In this context, directors (and individuals performing certain other functions) will need to be pre-approved by the Central Bank and so will be required to complete an online IQ.

As part of the fitness and probity process, the Fund will be required to complete the following in respect to each proposed director:

- complete initial and ongoing due diligence on the individuals;
- approve each proposed director's appointment to the Board of directors; and
- maintain records.

For certain other specified functions, Central Bank pre-approval is not necessary but initial and ongoing due diligence and records are required. All directors must confirm that they comply with the Standards, that they agree to abide by the Standards and that they will notify the relevant entity without delay if they no longer comply with the Standards. All directors will need to reconfirm this on an annual basis, by way of CBI filing.

As mentioned above Irish Funds, a key industry body, issued the Code and a frequently asked questions document which aims to ensure that the Board performs effective oversight of the Fund's activities.

Although the Code is stated to be voluntary, the Central Bank expects full compliance with its requirements.

5.6 Legal Counsel

Irish legal counsel is required to be appointed who will act as the main point of contact with the Central Bank in respect of the authorisation of the QIAIF.

5.7 Auditor

A QIAIF is required to produce annual audited accounts and an Irish auditor is required to be appointed.

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5.8 Secretary

An Irish secretary is required to be appointed, which would ordinarily also typically provide the registered office for the QIAIF.

Simmons & Simmons Corporate Services Limited regularly provides secretarial services to QIAIFs and all other types of Fund structures, as well as Section 110 Companies (discussed below). Further information is available upon request.

5.9 MLRO

An MLRO is required to be appointed.

The MLRO need not be based in Ireland but must have requisite qualifications and sufficient experience in Irish anti-money laundering laws to undertake such a role. It is common for a third-party provider to be engaged as MLRO. Typically, this is an employee of the AIFM.

6. Restrictions

A QIAIF is not currently subject to borrowing, diversification or leverage restrictions. The investment objectives and policies of a QIAIF must be clearly defined in the offering documents with sufficient information to enable investors to be fully aware of the risks they are entering into. The offering documents must also identify a QIAIF's intentions in respect of borrowing and leverage.

A QIAIF (or the AIFM on its behalf) may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. This requirement does not apply to investments in other investment funds. It is also disapplied where the QIAIF is a venture capital, development capital or private equity QIAIF provided its offering documents indicate the intention regarding the exercise of legal and management control over underlying investments.

Where a QIAIF invests in units/shares of another Fund managed by the same AIFM or by an associated or related company, the manager of the Fund in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of shares/units.

7. Loan Originating QIAIFs

The Central Bank permits the authorisation of QIAIFs that originate loans from lenders (“**LQIAIFs**”). Irish regulated funds other than LQIAIFs are prohibited from originating loans, though they are permitted to acquire loans on the secondary market.

LQIAIFs are obliged to limit their operations to the business of issuing loans, investment in debt and credit instruments, participating in loans, participating in lending and to operations directly arising therefrom, to the exclusion of all other commercial business. i.e. who the LQIAIF lends to is limited. For example, an LQIAIF cannot originate consumer loans.

LQIAIFs are also permitted to invest in equity securities of entities or groups to which the LQIAIF lends or instruments which are held for treasury, cash management or hedging purposes. Additionally, an LQIAIF can be issued to debtors in return for equity and/or investment in debt or credit instruments.

The Central Bank has stipulated a number of conditions and details of the main conditions are set out below:

- It must have an authorised AIFM or be authorised as an internally managed QIAIF. Whilst an LQIAIF may be passported throughout the EEA, it may only be passported with an authorised AIFM and not if the LQIAIF is internally managed.
- The QIAIF (or its AIFM) must have a variety of procedures, policies and processes relating to a variety of matters linked to its loan origination activity.
- Similar to a QIAIF, an LQIAIF must also comply with rules regarding equal treatment of investors as regards due diligence opportunities afforded to them (though whether an investor takes up the opportunity is a matter for the investor).

- An LQIAIF must comply with diversification requirements which limit exposures to any one issuer or group to 25% of the Fund's net assets though this is subject to both a ramp-up and a ramp-down period at the beginning and end of the life of the QIAIF.
- An LQIAIF must comply with various requirements when acquiring a loan from a credit institution on a bilateral basis (but such requirements will not apply if the loan has been offered to multiple parties and is acquired on arms-length terms).
- An LQIAIF must have a comprehensive stress testing programme in place covering a variety of issues.
- An LQIAIF must be closed-ended.
- An LQIAIF is subject to a leverage restriction of 200% of NAV.
- An LQIAIF is subject to enhanced disclosure requirements as regards the offering documents and periodic reports.

Note that the EU is in the process of amending the AIFMD to introduce, among other things, a regime for loan originating AIFs. The detailed changes, however, are not yet known and, in any event, the new rules are unlikely to apply until late 2025.

8. Section 110 Companies

Depending on the wording of the particular treaty and its legal form, a QIAIF may be able to access a particular Double Taxation Treaty (“DTA”). Where this is not possible, though, a common solution is for the QIAIF to hold underlying investments through an Irish special purpose vehicle (“SPV”), which is capable of accessing a DTA. Such structures require detailed analysis from a tax perspective.

A specific tax regime in Ireland applies to SPVs which acquire financial assets and meet certain conditions. This type of SPV is known as a “Section 110 Company” or “S110 Company”. The Section 110 Company is financed by the issue of profit participating notes (“PPNs”), rather than to shares or units, to investors.

Section 110 Companies are generally entitled to the benefits afforded by DTAs. Access to a DTA means that income paid to the Section 110 Company in respect of its foreign investments may be subject to reduced or zero withholding tax.

Profits arising from the activities of the Section 110 Company are chargeable to corporation tax as if it were a trading company. However, all expenses incurred wholly and exclusively in the course of the transaction - such as any interest expense incurred by the Section 110 Company (including profit participating interest) - should be deductible in calculating its taxable profits.

The establishment of a Section 110 Company is a straightforward and inexpensive process.

This structure may be used for a variety of asset classes and may involve layers of a subsidiary structure. A typical tier structure operates as follows:

- a Section 110 Company may be established as a 100% subsidiary of a QIAIF;
- investors subscribe for shares/units in the QIAIF which invests in the Section 110 Company;
- the QIAIF finances the Section 110 Company by subscribing for the PPN issued by the Section 110 Company;
- the Section 110 Company uses this financing to purchase investments in countries with which Ireland has a DTA (or any country required), for example, underlying loan assets; and
- income which the Section 110 Company receives from its investments is paid out by it to the QIAIF as interest under the PPN. A small amount of profit is left in the Section 110 Company which is taxed at 25%. While the income received by the Section 110 Company is subject to corporate tax, the matching pay-out of income to the QIAIF under the PPN is treated as deductible expenditure thereby preserving the subsidiary's tax neutrality and avoiding any tax leakage. Profits made by the QIAIF can be paid to non-Irish resident investors free of Irish withholding tax.

If a QIAIF establishes a subsidiary, the following Central Bank requirements will apply:

- the establishment of the subsidiary must receive prior approval from the Central Bank;
- each subsidiary must be wholly owned and controlled by the QIAIF;
- the shares of the subsidiary must be held by the QIAIF's depository on behalf of the QIAIF;
- the constitutive and offering documents of the QIAIF must provide for the establishment of subsidiaries;

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- A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, set against a bright blue sky with scattered white clouds. The buildings are positioned on the left side of the page, creating a sense of height and scale.
- the QIAIF must be party to any third-party appointments or contractual arrangements of the subsidiary;
 - the constitutive document of the subsidiary must restrict control or holding shares in it;
 - the subsidiary must have a majority of directors in common with the QIAIF; and
 - the assets of the subsidiary must be valued in accordance with the QIAIF valuation rules.

9. Tax and Tax Reporting

The Irish tax regime is one of the primary reasons for Ireland's attraction as a location in which to domicile and/or provide services to QIAIFs. The primary legislative basis for the regime is the Taxes Consolidation Act 1997 (as amended). The Finance Act generally amends or supplements this each year but no major change to the current regime is considered likely in the foreseeable future.

Funds authorised as QIAIFs are tax exempt in Ireland. There are no Irish capital, stamp or other duties applicable to the issue, transfer, exchange or repurchase of shares or units in a QIAIF.

9.1 Exit tax

Irish resident investors are at first instance subject to an exit tax, but this is subject to numerous exemptions which are typically indicated in the QIAIF's subscription form.

Non-Irish resident investors are generally exempt from the exit tax, provided that such investors have completed the relevant non-resident declaration (typically contained in the QIAIF's subscription form) or where the QIAIF is in possession of written notice from the Irish tax authorities dispensing with declaration requirement for non-resident investors.

9.2 Tax residence

A QIAIF established in Ireland will generally be regarded as being tax resident in this jurisdiction. Where the QIAIF is a company, it should be centrally managed and controlled in Ireland and the directors of the company will need to conduct the affairs of the company to allow for this. A QIAIF constituted as a trust will be regarded as resident in Ireland if the trustee is resident in Ireland. CCFs are tax transparent and therefore the jurisdiction of residence of the underlying investors will be a key consideration for tax purposes.

9.3 Double tax treaties

Ireland has an extensive network of DTAs, with every major financial centre and/or developed economy. The agreements generally cover income tax, corporation tax and capital gains tax.

QIAIFs may not always be able to access treaty benefits due to their status in Ireland and accordingly specific advice should always be sought on relevant issues.

9.4 VAT

Value Added Tax (“VAT”) is a consumption tax which providers of certain services are obliged to impose when billing for such service. Services comprising the management and administration of a QIAIF are typically exempt from VAT. Investment management services are exempt from VAT where the investment manager has been delegated complete management discretion.

9.5 IREF Withholding Tax

An Irish domiciled Fund which invests in Irish real estate may be considered to be an Irish Real Estate Fund (“IREF”). IREFs may be requested to apply 20% IREF withholding tax in respect of an IREF taxable event in respect of certain specified persons (subject to certain exceptions). Broadly, a specified person refers to an investor that is not otherwise subject to exit tax on a chargeable event, again, subject to certain exceptions (exceptions include, for example, a non-Irish resident pension scheme, regulated fund or life business authorised by an EU member state or an EEA state which is subject to supervisory and regulatory arrangements at least equivalent to those applied in Ireland).

9.6 Common Reporting Standard

Ireland has adopted the Common Reporting Standard (“CRS”). The CRS framework represents a globally coordinated approach to the disclosure of income earned by individuals and organisations in order to combat tax evasion. Investors in QIAIFs are required to provide certain information which may be reportable to the tax authority of the home jurisdiction of such investor.

9.7 FATCA

Subject to limited exceptions, Irish Funds are treated as ‘foreign financial institutions’ for FATCA purposes. As such, and again subject to limited exceptions, Funds/sub-funds need to register with the US Internal Revenue Service to obtain a Global Intermediary Identification Number and file annual returns with the Revenue Commissioners in respect of US reportable accounts.

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