CP 162 – BOOSTING IRELAND'S ATTRACTIVENESS AS A PRIVATE FUNDS DOMICILE

As we have previously reported, on 9 September 2025, the Central Bank of Ireland (the Central Bank) published CP 162, "Consultation on proposed amendments to the Central Bank Alternative Investment Fund Rulebook (AIF Rulebook)".

Taking its cue from ELTIF, AIFMD 2 and the Irish government's 2030 Funds Review, the amendments, if implemented as expected, will mean that the AIF Rulebook will be fit for purpose in terms of ensuring that Ireland has a competitive regulatory framework for its private funds offering.

What does this Note contain?

The CP covers a wide variety of issues and topics. This note looks at twelve key areas for our clients, along with some of the additional technical changes being proposed.

For each of the key topic, we consider

- what is the current position? and
- what is the Central Bank proposing to change it?

Where relevant, we also offer our thoughts on the proposals from a commercial point of view.

Taking the twelve topics in turn:

1. **Subsidiaries**

What's the current position?

At present, the Central Bank's AIF Rulebook has a number of requirements centring around wholly owned subsidiaries – these include

- prior Central Bank approval
- fund directors must constitute the majority of the subsidiary's board
- the subsidiary being wholly owned by the AIF and
- subsidiaries themselves being unable to enter into contracts unless the fund is party to those arrangements.

These rules made it difficult for subsidiaries to be established in third countries or as co-ownership vehicles.

What's being proposed?

The Central Bank is proposing an update of the rules governing investment through intermediary investment vehicles by QIAIFs, including SPVs, aggregators, subsidiaries and co-investment vehicles.

This would remove the problematical restrictions while placing an obligation on the AIFM to

- disclose the use and purpose of a subsidiary in its prospectus
- carry out due diligence on the subsidiary and
- have in place documented policies and procedures for its oversight and monitoring.

What does Simmons think?

The requirement for subsidiaries to be wholly owned and to share a majority of directors with the AIF was problematical in relation to issues such as co-ownership and establishing SPVs in third countries and the proposed removal is welcomed.

2. **Share Class Flexibility**

What's the current position?

The Central Bank's Guidance on share class features which accompanied the launch of the new Investment Limited Partnership permitted the use of differentiated share classes but only for closed-ended AIFs.

What's being proposed?

Under CP 162, the Guidance will be incorporated into the QIAIF chapter of the AIF Rulebook, with the result that differentiated share classes would be permitted for all AIFs.

This should allow managers to make use of a number of features, including the ability to

- issue shares at a price other than at NAV
- include excuse and exclude provisions
- stage investing and
- have management participation/waterfall arrangements.

The Central Bank proposals would also permit the use of side letters, provided that these

- are disclosed in the fund prospectus and
- do not cause material disadvantage to other investors.

What does Simmons think?

These features are integral to private asset funds where liquidity in some form is increasingly expected. The limitation to closed-ended funds was a major constraint.

3. **Loan Origination**

What's the current position?

Loan origination in Ireland is governed by the 'Loan Origination QIAIF' (L-QIAIF) section of the AIF Rulebook. This product specific set of rules was introduced into Ireland in the aftermath of the Financial Crisis meaning that establishing a loan fund was more complex and had additional regulatory risk than the equivalent framework in Luxembourg.

The Amending Directive introduces a new Europe-wide regime for loan origination and private credit.

What's being proposed?

The Central Bank is proposing to remove the L-QIAIF section from the AIF Rulebook and to align its requirements fully with the new EU framework.

This move would lead to a number of beneficial consequences, including

- permitting asset mixing
- permitting open-ended loan funds with appropriate liquidity management
- expanded leverage limits and
- broadening the scope of a fund's lending.

AIMFD 2 does, however, have slightly narrower diversification limits (20% v 25%) and a 5% risk retention requirement.

What does Simmons think?

The existence of a prescriptive, product-based loan origination fund regime has long put Ireland at a disadvantage to Luxembourg (where no such regime existed) when it came to loan funds. AIFMD 2 has levelled the playing field and, notably, the Central Bank has not sought to gold plate these requirements.

4. **Removal of Guarantee Prohibition**

What's the current position?

The AIF Rulebook contained a general prohibition of QIAIFs granting loans or acting as a guarantor.

What's being proposed?

Since the new European loan origination rules contain no such restrictions, the Central Bank is proposing to remove this general prohibition from the AIF Rulebook, so this aligns with the amended AIFMD.

What does Simmons think?

The Central Bank accepts that the "provision of guarantees is standard market practice for fund financing arrangements […] and in the context of private equity investments" and this recognition of market practice is to be welcomed.

5. Liquidity Management Tools (LMTs)

What's the current position?

The AIFMD as amended will require an AIFM that manages an open-ended AIF to

- select at least two LMTs from the list set out in Annex V of the AIFMD and
- disclose in the AIF's prospectus which LMTs have been selected and the conditions under which they can be activated or deactivated.

The LMTs in Annex V include (among other things)

- suspension of redemptions and subscriptions
- redemption gates
- extension of notice periods and
- side pockets.

What's being proposed?

In CP 162, the Central Bank intends to

- move existing provisions for LMTs into a dedicated LMT section of the AIF Rulebook
- incorporate the AIFMD's requirements for the selection and use of LMTs
- provide for AIFMs to select further LMTs beyond those set out in Annex V of the AIFMD.

What does Simmons think?

These liquidity tools have long been part of the tool kit for Irish funds so providing for them will not be problematical. Liquidity has always been a central focus of the Central Bank who had required L-QIAIFs to be closed-ended for fear of a run on the fund.

6. AIF Management Companies

What's the current position?

A common form of fund structure under the Irish rules is for an Investment Limited Partnership (ILP) to have a management company which is not an AIFM.

Currently, an investment fund must seek the Central Bank's authorisation as an AIF Management Company – a detailed and onerous process.

What's being proposed?

CP 162 proposes the removal of this requirement with the deletion of Chapter 4 ('Management Company Requirements') of the AIF Rulebook, since the Central Bank sees the additional requirements which have been imposed in the Rulebook as being duplicative.

Governance and director suitability requirements for AIF Management Companies would continue to apply through existing regulatory mechanisms such as the Fitness and Probity regime.

The result of these changes is intended to be a reduction in the regulatory burden for investment funds.

What does Simmons think?

Another sensible move – the approval process was detailed and onerous in situations where there already is a regulated AIFM and the removal of the requirement is a welcome reduction in the regulatory burden.

7. **Minimum Investment Requirements**

What's the current position?

Currently, a would-be investor in a QIAIF is required to invest a minimum of €100,000 and to do so as a single payment. Private asset funds, though, often operate on a commitment basis, with investments drawn down over time, meaning that some potential investments into such funds are inevitably lost as a result of the single payment restriction.

What's being proposed?

It is further proposed to permit the minimum investment requirement to be met through a capital commitment model, whereby an investor commits to investing at least €100,000 but the amount is drawn down in stages over time by the QIAIF as it ramps-up its investment portfolio.

At the same time, the Central Bank is proposing to broaden the exemptions for minimum investment requirements to include:

- AIFMs, investment managers, and advisers.
- Directors, employees, consultants, and partners of these entities.

What does Simmons think?

Restrictions such as this demonstrated that the Irish regulatory regime was not tooled for private asset funds. Fixing nits like this is a really positive development.

8. **Initial Offer Period**

What's the current position?

Under the current rules, the initial offer period for closed-ended and open-ended with limited liquidity QIAIFs is limited to thirty months.

What's being proposed?

To remove the thirty-month restriction and replace it with a disclosure requirement which aligns with the approach being taken in respect of European Long-Term Investment Funds (ELTIFs).

To provide adequate investor protection, a new obligation would be imposed by which the AIFM would be required to return an investor's subscription proceeds on request where the offer period has expired or where the AIFM has extended the offer period and the fund has failed to issue units to the investor.

What does Simmons think?

The limitation caused difficulty with respect to ramp-up periods and staggered closings and its removal is welcome.

9. **Warehoused Assets**

What's the current position?

The AIF Rulebook requires AIFs to pay no more than the current market value for warehoused assets, with full details of any fees, charges or interest payable in relation to warehousing being disclosed in the prospectus.

Other jurisdictions, on the other hand, allow transfers at cost or pre-agreed prices, a practice that is more in tune with market practice.

What's being proposed?

To remove the current market value requirement, provided the terms of the warehousing arrangement are disclosed to investors in the prospectus.

What does Simmons think?

A further example of alignment with ELTIF.

10. **Charity Share Classes**

What's the current position?

There has been an increase in demand for philanthropy-focused share classes, but currently no regulatory framework exists for this.

ID 1144 in the Central Bank's AIFMD Q&A provides for the establishment of an AIF with a share class that makes distributions to a charity, subject to the following requirements

- an active election by the investor to subscribe to such a share class
- distributions must only be paid to a charity which is approved in the relevant jurisdictions

- the fund's prospectus or supplement must clearly set out
    - the implications of having such a share class
    - details of the charity to which the distributions are being made
    - that such distributions will not be paid out of the capital of the fund and
- there must be periodic reporting to investors, which must include the amounts distributed to charity.

What's being proposed?

It is proposed to incorporate ID 1144 into the AIF Rulebook, thereby formalising the ability to allow charity share classes.

What does Simmons think?

The purpose of the Q&A is to address queries that arise and to address uncertainty pending a definitive position which has now been arrived at.

11. **Closed-Ended Fund Governance**

What's the current position?

The existing rules around the governance of closed-ended AIFs are seen by many as being unnecessarily complex.

What's being proposed?

The Central Bank is proposing to simplify these requirements around changes and amendments to

- duration
- investment objectives or material changes to investment policies or
- the maximum charges for redemption or repurchase of units or the maximum annual fee.

Where an amendment includes an opportunity for investors to redeem from the closed-ended QIAIF, these proposals would require a simple majority of the votes cast (rather than 75%).

What does Simmons think?

Shareholders entering a closed-ended fund will need to consider that material changes may be made with a reduced majority for consent. Managers will need to consider what liquidity option can be provided to avail of this reduced majority facility.

12. **Approach to Sub-Threshold AIFMs**

What's the current position?

Where an AIFM manages an AIF which falls below the thresholds set out in Article 3(2) of the AIFMD, only a small number of the provisions of AIFMD apply (such as the requirement to register with and report annually to the relevant national competent authority).

Under domestic Irish rules, sub-threshold or registered AIFMs have been able to manage QIAIFs for an initial start-up period of up to two years. This has caused concerns as to whether the interests of investors are being adequately protected since such AIFMs are not subject to the AIFMD's requirements on, for example, organisation, capital, risk management or liquidity management.

What's being proposed?

The Central Bank has decided to require such AIFMs and non-EU AIFMS to comply with the requirements of AIFMD to

- treat all investors fairly and
- inform investors of any arrangement whereby the depositary seeks to discharge itself of liability or any changes to depositary liability.

Part III of the QIAIF chapter of the AIF Rulebook will also apply to non- EU AIFMs coving rules on – among other things - delegation, liquidity, and valuation.

Where an L-QIAIF is managed by a sub-threshold or non-EU AIFM, the fund must remain closed-ended.

What does Simmons think?

While most of the proposed changes introduce more flexibility, this is a more prescriptive change but in keeping with the AIFMD 2 alignment.

Other Technical Changes

The Central Bank is also looking to amend certain parts of the AIF Rulebook in order to

- correct existing errors or ambiguities, which have created operational challenges or
- clarify the purpose and intended outcome of a particular rule.

These clarifications and updates include:

- removing the requirement to specify procedures for replacing a depositary or AIFM in the fund's constitutional documents
- clarifying that certain administrative charges applied to investor redemptions/repurchases are distinct from the use of LMTs (so, where a fund imposes such standard charges as part of its normal redemption/repurchase process, this does not trigger the requirements under Annex V of the amended AIFMD)

- clarifying that the rules on connected party dealing apply to asset transactions with unitholders - these requirements would not apply to transactions (such as redemptions, subscriptions or other distributions) by unitholders in relation to their units in the fund

- updating the ELTIF chapter to ensure its provisions are consistent with those in the QIAIF Chapter

- updating the definitions of "votes cast" and "value at risk"

- removing references to bearer securities

- clarifying the requirements around subscription in specie

- confirming that the establishment of side pocket classes is not contingent on the asset's liquidity profile

- requiring any material breaches and errors to be reported to the Central Bank "immediately" (as opposed to "promptly")

- requiring an umbrella QIAIF which is an investment company to include the phrase "An umbrella fund with segregated liability between sub-funds" in its prospectus

- removing the 10% threshold on retention of redemption proceeds

- simplifying governance rules

- relaxing depositary requirements for QIAIFs investing more than 50% of net assets in other investment funds.

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