

Fund Finance Briefing

Central Bank Of Ireland Relaxes Regulatory Prohibition on Irish Funds Guaranteeing Third-Parties

Ireland is widely recognised as a leading domicile in which to establish investment funds. The most common Irish-regulated fund structures used in fund finance transactions are: (i) Irish collective asset-management vehicles (“**ICAVs**”); (ii) investment limited partnerships (“**ILPs**”); and (iii) investment companies or PLCs (together, “**Irish Funds**”).

The most common form of Irish Fund subject to the Alternative Investment Fund Managers Directive (“**AIFMD**”), and the fund most used by private capital sponsors, is the Qualifying Investor Alternative Investment Fund (“**QIAIF**”). A QIAIF is subject to the Central Bank of Ireland’s (“**CBI**”) AIF Rulebook.

Up to now, the AIF Rulebook has prohibited QIAIFs from acting as a guarantor on behalf of third parties. The reference to “guarantor” is not defined in the AIF Rulebook and accordingly, has been broadly interpreted

as prohibiting all forms of credit support, including guarantees and other security interests. In addition, “third parties” has also been interpreted broadly, including to capture co-investment vehicles, or master funds, into which a QIAIF invests. Accordingly, cascading pledge structures have often been required for fund finance transactions where a QIAIF is a feeder fund rather than a borrower. In other words, the feeder QIAIF grants security to the borrower and the borrower then onwards assigns the benefit of that security to the lender/security agent.

Helpfully, in the context of fund finance transactions, the CBI issued an updated Q&A on the AIF Rulebook on 7 March 2025 which has provided a number of clarifications on the guarantee restriction included within the AIF Rulebook including that the AIF Rulebook does not prevent a QIAIF from providing a guarantee (or other security interest) in respect of investments and / or intermediate vehicles for such investments in which the QIAIF has a direct or indirect economic interest. The Q&A provides that in such circumstances, there are a number of conditions to which the provision of the guarantee is subject, the most material of which are:

1. such arrangements are determined by the AIFM to be in the best interests of the QIAIF and the investors in such QIAIF and are ancillary to the Qualifying Investor AIF's predominant investment strategy;
2. the AIFM (or in the case of a non-Irish AIFM or registered AIFM, the board of the QIAIF) and the QIAIF's depository confirm that the proposed transaction is at arm's length and in the best interest of investors;
3. the QIAIF's offering document discloses the ability of the QIAIF to grant such guarantees, as well as all material risks associated with such arrangements;
4. the liability of investors in the QIAIF under such arrangements (above the value of their current

holdings of shares or other interests in the QIAIF) shall be limited to the amount, if any, unpaid on the shares or other interests held by them which shall include, in the case of a QIAIF that raises capital under a formally agreed commitment basis, the amount of their undrawn capital commitments in accordance with the prospectus and the constitutional document of the QIAIF; and

5. the AIFM must comply with any requirements under AIFMD applicable to it relating to leverage and risk management.

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This is a very welcome development for fund finance transactions and demonstrates the CBI's commitment to align the QIAIF regulatory regime with those of other key fund jurisdictions and the CBI's European Long-Term Investment Fund regime (which does not contain the same third-party guarantee prohibition).

The CBI Q&A has been issued on an interim basis pending a wider review by the CBI of the AIF Rulebook (currently expected to begin in Q2 2025 and be finalised in Q4 2025). The AIF Rulebook changes will run alongside the implementation of AIFMD 2.0 in Ireland, which itself is expected to be adopted in Ireland later this year.

The Matheson Fund Finance team have extensive experience advising sponsors, managers and lenders on fund finance transactions. Please don't hesitate to contact the Matheson Fund Finance team for any queries.

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