Establishing an Irish Regulated Loan Origination Fund

What is an Irish Regulated Loan Origination Fund?

The Central Bank of Ireland (**CBI**) permits the establishment of loan originating Qualifying Investor AIFs (**L-QIAIFs**) subject to its AIF Rulebook. The L-QIAIF rules are consistent with the ESMA Opinion on loan originating AIFs issued in 2016.

An Irish Loan Origination Fund can be:

- Set up in a variety of legal structures.
- Authorised in 24 hours from filing with the CBI.
- Internally managed or can appoint a third party AIFM.
- Passported throughout the EEA under AIFMD.

An Irish Loan Origination Fund is not:

- Taxed on income and gains at fund level.

Loan origination requirements

L-QIAIFs are required to comply with the general QIAIF criteria **and** the L-QIAIF Rules.

A summary of key L-QIAIF Rules is as follows:

- **Asset mixing:** L-QIAIFs are required to limit operations to: "the business of issuing loans, participating in loans, investment in debt/credit instruments, participations in lending and to operations relating thereto, including investing in equity securities of entities or groups to which the L-QIAIF lends or which are held for treasury, cash management or hedging".
  - For QIAIFs seeking to invest in other equity securities and derivative instruments for other than hedging, this can be achieved by utilising a non-L-QIAIF for investment in such securities and that sub-fund investing into an L-QIAIF on a fund of funds basis. Alternatively, sponsors can offer two separate sub-funds, one L-QIAIF and one non-L-QIAIF, and allow investors to allocate their desired percentages on a "side-by-side" basis.
  - L-QIAIFs may invest in the equity securities of group companies to which they have lent, provided the activity is related to the lending activity of the L-QIAIF.
- **Leverage:** L-QIAIFs must not have gross assets of more than 200% of NAV (i.e. 1:1). Breaches of this limit must be corrected within 30 days or CBI approval sought of a formal plan to bring the L-QIAIF into compliance.
- **Diversification:** L-QIAIFs must limit exposure to any one group to 25% of NAV within a specified time frame. Typically, this time frame will be set to correspond with the AIF's investment period.

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- **Closed-ended:** L-QIAIFs are required to be closed-ended structures but distributions and redemptions may be permitted on a discretionary basis if there is available cash or liquid assets.
- **Borrowers:** L-QIAIFs are prohibited from lending to:
  - Natural persons.
  - The AIFM, management company, general partner, depositary, or to delegates or group companies of these.
  - Other collective investment schemes.
  - Financial institutions or related companies of these, except in the case where there is a bona fide treasury management purpose which is ancillary to the primary objective of the L-QIAIF.
  - Persons intending to invest in equities or other traded investments or commodities.
- **Policies:** L-QIAIFs must have the following policies, processes and procedures in place:
  - Risk appetite statement.
  - Credit monitoring, renewal and refinancing (including criteria, governance and decision making committee structures).
  - Collateral management policy.
  - Concentration risk management policy.
  - Valuation, including collateral valuation and impairment.
  - Credit monitoring.
  - Identification of problem debt management.
  - Forbearance.
  - Delegated authority.
  - Documentation and security.

Dechert has developed detailed L-QIAIF policies and has useful templates to assist clients developing bespoke policy books for each fund.

General QIAIF Investment Restrictions

QIAIFs (both L-QIAIFs and non-L-QIAIFs) are generally subject to minimal investment restrictions (QIAIFs not authorised as L-QIAIFs cannot issue debt) and, while L-QIAIFs are subject to the leverage limits disclosed above, non-L-QIAIFs have no limits on borrowing or leverage.

Pursuant to AIFMD, a feeder AIF (which for AIFMD is 85% of NAV invested into another AIF) that invests into a non-EEA master AIF may not utilise the marketing passport.

The CBI has additional rules in relation to fund of fund investments by QIAIFs:

- QIAIFs may invest all of their assets into another fund; however, if a QIAIF invests more than 50% of its assets into an unregulated fund:
  - The minimum subscription amount required increases to €500,000 or its foreign currency equivalent.
  - The information memorandum must contain a prominent disclosure that identifies, on an item-by-item basis, the conditions that apply to the QIAIF and its AIFM, but do not apply to the unregulated AIF and its manager.
- QIAIFs may not circumvent this rule by investing in two unregulated target AIFs with the same investment policy.

Legal structures

QIAIFs may be established using the following structures:

- Corporate structures:
  - Irish Collective Asset Management Vehicle (ICAV) (the default option).
  - Variable Capital Company (this structure is no longer typically utilised).
- Contractual structures:
  - Investment Limited Partnership (ILP).
  - Unit Trust.
  - Common Contractual Fund (CCF).

All structures, with the exception of the ILP*, can be umbrella structures (see further detail in the "Umbrella Structures" section). For a parallel feeder structure to offshore partnership structures, an Irish 1907 Limited Partnership, which is an AIF pursuant to AIFMD but is not a QIAIF and, as such, is not subject to the *AIF Rulebook*, is an alternative structuring option. More information on this structure is available via dechert.com.

Each QIAIF structure will require:

- An alternative investment fund manager (AIFM) (ICAVs can be self-managed).
- Typically, a portfolio manager (which must be pre-approved by the CBI to manage Irish funds) or a non-discretionary investment adviser.
- Board of Directors/(non-corporate structures) AIF Management Company (can be AIFM)/General Partner (ILP).
- Irish domiciled depositary for custody of assets.
- Fund accountant and transfer agent (typically one entity, the "Administrator"), which is generally Irish domiciled.
- Auditors.
- Irish legal advisers.
- Irish corporate secretary for corporate QIAIF or Management Company/GP.
  - Dechert Secretarial Limited is Dechert Dublin's Company Secretarial arm and offers full service secretarial support.

Umbrella structures and the L-QIAIF Asset Mixing Rules

Other than the ILP, all Irish QIAIFs may be established as an umbrella structure (sometimes called "segregated cells" or "series"). The umbrella structure provides scalability as new sub-funds can be added without requiring new infrastructure (board/management company, service providers, contracts or documentation (other than the specific AIF particulars)). This reduces costs and provides better negotiating ability with service providers (as costs may be based on total AUM of the platform rather than just one sub-fund).

Umbrella structures are a single legal entity with separate portfolios operating with segregated assets and liabilities pursuant to law and each sub-fund can have different strategies, portfolio managers and liquidities.

In the context of L-QIAIFs, it should be noted that the CBI's restrictions on asset mixing are preferably addressed by the use of an umbrella structure whereby a non-L-QIAIF invests part of its assets into an L-QIAIF for direct origination exposure and invests itself into other types of assets not permitted as part of the L-QIAIF Rules. Further information regarding legal structures and management options are available from Dechert contacts.

* The Investment Limited Partnerships (Amendment) Bill 2019 includes proposed legislative changes to permit the ILP to be established as an umbrella structure.

How Dechert can assist

- Detailed fund structuring and planning, including global tax advice, cross-border structuring and distribution planning to allow you to maximise your investor base.
- Preparing required fund documentation and negotiating contracts (information memorandum, constitutional documents, administration, depositary, AIFM, portfolio management and trading contracts).
- Preparing L-QIAIF policies with portfolio manager and AIFM.
- Obtaining CBI authorisation.
- Irish-based global registrations team that leverages off Dechert's global offices and client-focussed desktop solutions.

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