A GUIDE TO ESTABLISHING LOAN ORIGINATING FUNDS IN IRELAND
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INTRODUCTION

Loan Originating Funds

Ireland was one of the first EU member states to introduce a specific regulatory framework for loan originating investment funds. The Central Bank of Ireland (the Central Bank) took a leadership position on loan origination, first consulting on the topic in 2013, before publishing a dedicated loan origination framework in 2014. Recent enhancements to this regime make loan origination funds even more attractive for promoters, managers and, most importantly, investors.

“ONE OF THE KEY ADVANTAGES OF ESTABLISHING AS AN IRISH L-QIAIF IS THE CLARITY, CERTAINTY AND EFFICIENCY OF THE REGULATORY REGIME.”
POSSIBLE SOLUTIONS FOR DIRECT LENDERS AND INSTITUTIONAL INVESTORS

The Irish loan originating qualifying investor AIF (L-QIAIF) is an ideal structure to meet both the requirements of the direct lender and institutional investor alike.

Direct Lenders

Stricter regulatory capital rules for banks in the aftermath of the global financial crisis have led to a reduced availability of credit. This, together with the increasing demand for capital, has created a major market opportunity for direct lenders.

Direct lenders (also referred to as alternative lenders), are non-bank entities that originate or issue loans to private counterparties. Individual direct lenders will typically follow a specific strategy (e.g. Mid-Market, SME or Real Estate), and will have a defined risk strategy appetite (e.g. senior debt, mezzanine, unitranche).

Institutional Investors

The prevalent “lower for longer” interest rate environment is making it difficult for investors to get yield, and this has resulted in an increasing number of institutional investors allocating capital to the private credit asset class.

A common requirement for many institutional investors under their investment mandates is that capital may only be allocated to regulated investment funds. The L-QIAIF fulfils this requirement.
WHY IRELAND FOR LOAN ORIGINATING FUNDS

A Strong Regulatory Framework

One of the key advantages of establishing as an Irish L-QIAIF is the clarity, certainty and efficiency of the regulatory regime.

Ireland’s regulatory regime has proven to be an attractive domicile for investment funds and with recent practical changes to the rules governing L-QIAIFs, this environment looks set to encourage promoters and managers to use Ireland as the domicile of choice for regulated loan originating funds.

A Pragmatic Regulator

The Central Bank takes a proactive, constructive approach to regulating the environment for funds in Ireland and regularly engages with industry to allow for new market and product developments, underpinned by a strong regulatory framework. The evolution of the L-QIAIF regime in Ireland is no exception to this.

Following a period of consultation with industry (including direct consultation with managers, investors, promoters and legal advisors) the Central Bank amended its regulatory provisions in order to provide for loan origination funds. As a result, Ireland was a first mover in the EU in terms of the regulation of loan funds, with the time frame for the approval of a QIAIF being as short as 24 hours.

A Clear Path for L-QIAIFs

As the interest in loan originating funds has grown and the regulatory landscape has developed, the Central Bank has built up significant expertise and experience in facilitating this specialist industry, ensuring that L-QIAIF managers can work within a clear and practical regulatory process which provides certainty in relation to requirements and approval timelines (thus meeting the speed-to-market demands of the industry).

L-QIAIFs fall under the Central Bank’s AIF Rulebook and are subject to the provisions of the EU’s Alternative Investment Fund Managers Directive. One of the many examples of how Ireland facilitates the operation of these funds is that the depositary duties in respect of L-QIAIFs are entirely consistent with those applicable under the AIFMD, without the imposition of any additional requirements.
TAX REGIME FOR THE IRISH L-QIAIF

L-QIAIFs benefit from the Irish tax regime for regulated investment funds, which means:

- no Irish income tax at the fund level;
- no Irish withholding tax on all distributions to non-Irish investors and certain categories of Irish investors (withholding taxes may apply to investments in certain Irish real estate assets);
- no transfer taxes on the issue, redemption or transfer of shares;
- exemptions from Value Added Tax for many services required by L-QIAIFs, as provided for under EU law.

Spanning over 70 countries across the EU, Middle East, Asia and South America, Ireland has one of the most developed and favourable tax treaty networks in the world. The availability of treaty benefits in a particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country. Consequently, treaty access needs to be reviewed on a case-by-case basis.

In the case of the US/Ireland double tax treaty, an Irish regulated investment fund is viewed as “resident” for the purpose of the treaty benefits and consequently, is entitled to treaty benefits where it meets all relevant conditions of the treaty including the Limitation on Benefits provisions. This can be an attractive feature for L-QIAIFs carrying on loan origination business in the US.

The Attractiveness of L-QIAIFs for US Investors

L-QIAIFs are particularly appealing to US investors looking to ensure they have the appropriate tax treatment in a regulated corporate fund. This is because an L-QIAIF formed as an Irish Collective Asset-management Vehicle (ICAV), a recently introduced corporate structure tailored for the funds industry, effectively allows taxable US investors to be in the same tax position as if they had invested directly in the underlying investments of the L-QIAIF. This ensures that the investor does not suffer any adverse tax consequences that can arise when investing outside the United States. This can be achieved because an L-QIAIF formed as an ICAV can make an election under the US “check the box” rules to be treated as a flow-through / transparent entity for US federal income tax purposes.
## Ireland as a Leading Domicile

Ireland is regarded as a key strategic centre of excellence by the world’s leading fund promoters and fund service providers, with a deep pool of specialist expertise built up over almost three decades. This expertise spans a wide range of services, including:

- fund domiciling and product structuring;
- fund administration and transfer agency;
- depositary;
- legal;
- tax and audit services;
- compliance;
- consultancy services; and
- stock exchange listing.

All of the world’s leading fund service providers have a physical presence in Ireland.

## Ireland as a Loan Servicing Centre of Excellence

In addition, Ireland has developed a deep level of expertise in loan servicing for a broad range of products, including L-QIAIF funds, which has helped establish it as one of the main global loan servicing centres. Irish fund service providers also have highly advanced and scalable servicing capabilities, built on global models and advanced technical solutions, supported by local expertise.

The funds industry in Ireland continues to demonstrate adaptability and a pro-active approach in responding to market trends and regulatory change by delivering innovative and cost effective solutions.

All of this, coupled with the in-depth knowledge and experience of service providers in Ireland, ensures that L-QIAIF managers benefit from an exceptional specialist framework from which to launch and grow their L-QIAIF product range in line with the evolving market, regulatory and distribution landscape.

## Ireland’s Competitive Edge

Ireland is one of the most open and dynamic economies in the world. Irish competitiveness has gone from strength to strength in recent years with the IMD World Competitiveness Yearbooks consistently ranking Ireland highly in several categories including availability of skilled labour, flexibility, adaptability of workforce, productivity, efficiency of companies and large corporations and R&D activities.
IRISH REGULATORY REGIME FOR LOAN ORIGINATING FUNDS

24 Hour Turnaround

L-QIAIFs can only be established in Ireland as Qualifying Investor Alternative Investment Funds (QIAIFs). QIAIFs must have a minimum initial subscription of €100,000 or greater (or its equivalent in another currency) and can be marketed solely to “Qualifying Investors” as defined in Central Bank’s AIF Rulebook.

Owing to their professional/sophisticated nature, QIAIFs benefit from a fast-track approval, which operates on a self-certification filing basis, provided that all parties to the fund are already regulated/approved by the Central Bank. This means that a QIAIF can be authorised by the Central Bank in 24 hours.

L-QIAIF Requirements

The regulatory requirements for L-QIAIFs are also set out in the Central Bank’s AIF Rulebook. By way of overview, L-QIAIFs must limit their operations to:

- issuing loans;
- participating in loans;
- participating in lending and operations relating thereto, including investing in debt and equity securities of entities or groups to which the L-QIAIF lends or which are held for treasury, cash management or hedging purposes.

Despite these restrictions, L-QIAIFs are permitted to use equity elements in their financing arrangements such as warrants, options and convertibles.

The Central Bank requires that L-QIAIFs have in place a number of procedures, policies and processes in order to set out the fund’s position in areas such as risk assessment, collateral management, diversification and credit monitoring. Regarding the assessment of risk, the Central Bank places particular importance on the requirement that L-QIAIFs should not rely solely or mechanistically on external credit ratings.

Sample L-QIAIF Structure

Set out below is a diagram of how an Irish ICAV QIAIF could be established with individual sub-funds set up as L-QIAIFs:
FUND AUTHORISATION & PASSPORTING

Required Service Providers

Each Irish collective investment scheme (including an L-QIAIF) authorised by the Central Bank will need to appoint, inter alia, in advance of fund authorisation, the following:

• an authorised AIFM (or adopt a self-managed structure);
• an authorised Irish based depository;
• an authorised fund administrator;
• directors, including two Irish resident directors; and
• an approved investment manager, where applicable (approval of an EEA-authorised entity can be fast-tracked).

A money laundering reporting officer (MLRO) and external auditors will also need to be appointed.

Key L-QIAIF Documents

In addition to completion of detailed application forms and a letter of application, the following must be submitted to the Central Bank:

• the constitutional document of the fund;
• the fund prospectus (together with supplements in respect of sub-funds where applicable);
• material contracts entered into with the relevant service providers; and
• Individual Questionnaires for the directors.

Gateway to Europe

AIFMD permits AIFMs authorised in the EU to manage and/or market their products on a pan-European basis. This passport regime applies equally to L-QIAIFs as it does to any other type of QIAIF, meaning that an L-QIAIF established in Ireland could be marketed right across the EU.

For more information on fund authorisation, view our publications at irishfunds.ie.
Irish Funds Industry Milestones

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland.

We represent the fund promoters/managers, administrators, custodians, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with more than 13,500 funds and net assets of more than €4 trillion.

The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it continues to be the location of choice for the domiciling and servicing of investment funds.

Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland’s regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.

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<td>1987</td>
<td>IFSC established</td>
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<td>1990</td>
<td>Ireland is first European jurisdiction to offer a regulated alternative investment fund product, the Irish Qualifying Investor Fund.</td>
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<td>2003</td>
<td>The Common Contractual Fund (CCF), an Irish tax transparent structure, is established.</td>
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<td>2007</td>
<td>Dublin Funds Industry Association (DFIA) renames to the Irish Funds Industry Association (IFIA). Financial Regulator can now authorise QIFs within 24 hours of receipt of completed documentation.</td>
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<td>2008</td>
<td>Memorandum of Understanding signed by the Irish and Chinese Regulators.</td>
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<td>2009</td>
<td>Ireland’s combined assets under administration reach €1 trillion.</td>
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<tr>
<td>2011</td>
<td>Ireland is amongst the first in EU to implement the UCITS IV Directive. Irish domiciled investment funds reach €1 trillion.</td>
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<tr>
<td>2012</td>
<td>Irish funds industry surpasses €2 trillion in total assets under administration.</td>
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<td>2013</td>
<td>Ireland ranked as the best place in the world to do business by Forbes Magazine. Ireland is first in EU to open AIFMD application process. Ireland has the highest rating in OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.</td>
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<td>2014</td>
<td>The Irish Funds Industry Association and the Asset Management Association of China sign MoU to promote closer co-operation. Ireland provides home for first China A-Shares ETF in Europe under RQFII.</td>
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<td>2016</td>
<td>Ireland granted RMB 50 billion RQFII quota. Access to Stock Connect extended to include Shenzhen. Irish Funds Celebrates 25th Year Anniversary.</td>
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<td>2017</td>
<td>Irish funds industry surpasses €4 trillion in assets under administration. Net assets domiciled in Ireland surpasses €2 trillion.</td>
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