

Fund Finance Friday



Irish Law Updates: Key Fund Finance Developments

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Just in time for St. Patrick's Day, recent updates in Irish law bring important changes for fund finance participants. Lawyers at Arthur Cox and Mason Hayes & Curran have provided insights on key regulatory and structuring developments that could impact market practices.

Arthur Cox recently published an article, "Irish Central Bank Update: Third Party Guarantees and Cascading Security," summarizing the Central Bank of Ireland's new guidance on third-party guarantees and cascading security under the AIF Rulebook. Read more [here](#).

Mason Hayes & Curran has published their fourth installment of *Irish Fund Finance in Five* where they explore key provisions in investor subscription documents and their impact on subscription line facilities. Despite growing interest in NAV-based and hybrid financing, subscription line facilities remain the dominant form of fund finance involving Irish fund vehicles. They highlight critical due diligence considerations for lenders, including security considerations, capital call mechanics, set-off risks and side letters. Read more [here](#).

In a separate article, Mason Hayes & Curran partners discuss the recent relaxation of third-party guarantee restrictions for Irish funds. The Central Bank of Ireland's new guidance clarifies that QIAIFs may now provide guarantees under specific conditions, enhancing Ireland's appeal as a jurisdiction for private funds and fund finance transactions.

Read the full article below:

Substantial Relaxation of Third Party Guarantee Restriction Applicable to Irish Funds



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Clarifications from recent helpful guidance by the Central Bank of Ireland is extremely welcome, and signals the removal of the restriction on guarantees applicable to Irish AIFs provided certain conditions are satisfied. Over time, Ireland has proven itself to be a convenient jurisdiction in which to conduct fund finance transactions. With its English-speaking population and its common law legal system, market participants based from other jurisdictions, such as the UK and the US, often find transactions involving an Irish nexus to be convenient and familiar. However, the interpretation of the restriction on third party guarantees had proven itself to be problematic in certain fund finance transactions. The removal of this restriction on third party guarantees further bolsters the attractiveness of Ireland as a jurisdiction of choice for private funds (as well as prospective lenders considering transactions with such vehicles).

On 7 March 2025, Central Bank of Ireland (the "**Central Bank**") released a revised version of its [AIFMD Questions and Answers document](#) (the "**Revised Q&A**"). This welcome guidance from the Central Bank pursuant to the Revised Q&A has been issued in advance of an expected upcoming consultation process in relation to updates to the AIF Rulebook.

The Central Bank is expected to commence a consultation process on proposed updates to its AIF Rulebook shortly, in preparation for the implementation of AIFMD II by the April 2026 European deadline.

By way of background, the Central Bank's AIF Rulebook prohibits Irish qualifying investor alternative investment fund ("QIAIFs") from granting loans or acting as a guarantor on behalf of a third party. This prohibition has been interpreted very widely since its inception and construed as a complete prohibition of the giving of guarantees by a QIAIF in respect of any obligations of any other party (other than wholly owned subsidiaries). This prohibition had previously proved problematic in Irish fund financing transactions where it was expected that an upstream or other entity within the structure would guarantee the borrowing of another entity within the structure.

This prohibition regularly arises in the context of subscription line facilities where the QIAIF is a feeder fund (and not the underlying borrower). In those circumstances, a workaround has been available whereby a "cascading security" arrangement is implemented. Some readers may be familiar with this approach in non-Irish structures, for example in the context of restrictions on granting security under ERISA. An example of a "cascading security" arrangement is as follows:

- The non-borrowing feeder fund granting a charge and security assignment in favour of the master fund over both (i) the feeder fund's uncalled commitments from its investors and (ii) the bank accounts which those capital calls are to be paid into (the "**Feeder Security Document**"), as security for its obligation to fund capital commitments to the master fund; and
- The master fund in turn granting a charge and security assignment in favour of the lender over (i) its uncalled commitments from the feeder fund (and any other investors), (ii) the bank accounts which those capital calls are paid into and (iii) its rights under the Feeder Security Document, as security for its borrowings from the lender.

Where a cascading security structure such as this is implemented, the lender can enforce directly against the feeder fund. This is done by enforcing the security granted by the master fund under the Feeder Security Document.

Irish QIAFs acting as guarantors

In a significant development, the Central Bank has clarified that QIAIFs may provide a guarantee in respect of investments and/or intermediate vehicles for such investments in which that QIAIF has a direct or indirect economic interest provided:

1. such arrangements are determined by the QIAIFs alternative investment fund manager (the "**AIFM**") to be in the best interests of both the QIAIF and its investors and are ancillary to the QIAIF's predominant investment strategy;
2. the AIFM (or in the case of a non-Irish AIFM or registered AIFM, the authorised QIAIF) and the QIAIF's depositary confirm that the proposed transaction is at arm's length and in the best interest of investors;
3. the prospectus discloses to investors that the QIAIF can provide a guarantee in respect of investments and/or intermediate vehicles for such investments in which the QIAIF has a direct or indirect economic interest, along with any associated material risks;
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 capital commitment basis, the amount of the undrawn capital commitments in accordance with the prospectus and the constitutional document of the QIAIF;
5. the Qualifying Investor AIF complies with provisions of Central Bank ID 1159 of a previous version of the Q&A^[1]; and
6. the AIFM must comply with the relevant requirements under AIFMD as applicable in relation to leverage and its risk management, including regularly conducting stress tests in accordance with Article 48 and other applicable requirements of AIFMD which shall cover market risks and any resulting impact, including on margin calls, collateral requirements and credit lines.

Key takeaways

This development is certainly welcome and is a positive indicator of the Central Bank's commitment to further enhancing and streamlining Ireland's private funds offering. However, as readers will note there are still a number of factors above which market participants need to be aware of prior to any QIAIF giving a guarantee. Ultimately, each transaction will need to be reviewed on a case-by-case basis to ensure it is appropriate for the guarantee to be given in the circumstances. Where there is any uncertainty, implementing a cascading security structure will continue to be a neat solution where possible in the transaction structure.

ID 1159 provides as follows:

1. I am a QIAIF/RIAIF that intends to invest through a co-investment vehicle that includes other third party investors and is not a wholly owned subsidiary of the QIAIF / RIAIF. Is that permissible?
2. Yes. The ownership / control of the co-investment vehicle must reflect the actual economic interest that the QIAIF/ RIAIF has in that vehicle and the QIAIF / RIAIF must demonstrate that such arrangements reflect the true economic interests of the parties holding shares in that vehicle. The reasons for use of a co-investment vehicle, rather than a wholly owned subsidiary, must be documented by the Board of the AIFM and approved by the depositary in writing and be available to the Central Bank on request. The arrangement should not be structured in such a way as to circumvent the policy objectives of this QA