

Welcome Enhancements to the QIAIF Pre-Submission Process

The Central Bank of Ireland ("Central Bank") has published helpful new guidance¹ (the "Guidance") regarding its pre-submission requirements for certain types of Qualifying Investor AIF ("QIAIF") products, and confirming the 24-hour approval process for all other QIAIFs, including loan-originating QIAIFs ("LQIAIFs").

Background

The QIAIF regime has long been the most popular category of regulated Irish AIF. A key factor underpinning the success of the QIAIF regime has been the speed to market available through the Central Bank's authorisation process. Under this process, new QIAIF products are approved by the Central Bank within 24 hours of submission of a complete application. Bar limited exceptions, no prior regulatory review of those applications is required, and the Central Bank instead relies on the fund's legal advisers and the AIFM to certify compliance with the relevant requirements.

In May 2020, the Central Bank using a prudential, risk-based approach introduced a pre-submission requirement for certain QIAIFs. In particular, this covered QIAIFs structured as: (a) LQIAIFs; (b) property funds; (c) life settlements funds; and (d) funds with high leverage. Subsequently and in response to the rapid growth of the crypto-asset industry, the Central Bank in July 2021 updated its AIFMD Q&A² to add a separate pre-submission

process for QIAIFs seeking to take exposure to crypto-assets.

Revised Requirements

The introduction of these pre-submission processes resulted in longer launch timeframes for affected QIAIFs over the last two years. It is therefore welcome that following completion of the Central Bank's prudential review of these fund categories, the Guidance now materially reduces and clarifies the QIAIF pre-submission requirements. A pre-submission is now only required for QIAIFs: (i) proposing to invest in Irish real estate; or (ii) seeking exposure to crypto-assets.

Therefore, a pre-submission is not required for other QIAIFs, which will all benefit from the 24-hour approval process (including LQIAIFs, property funds investing in non-Irish real estate, life settlements funds or funds with proposed high levels of leverage).

Irish Property Funds

For funds investing in Irish real estate, the Guidance clarifies the exact documents required, namely:

- Copies of the offering documents;
- Completed model portfolio template, including a line by line breakdown of the properties and related securities / instruments that the QIAIF intends to

¹ <https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/authorisation/pre-submission-process-for-a-qualifying-investor-aif>

² [https://www.centralbank.ie/docs/default-source/regulation/industry-market-](https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/aifs/guidance/qa/aifmd-q-a-40th-edition.pdf?sfvrsn=8)

[sectors/funds/aifs/guidance/qa/aifmd-q-a-40th-edition.pdf?sfvrsn=8](https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/aifs/guidance/qa/aifmd-q-a-40th-edition.pdf?sfvrsn=8)

utilise. *Where available, details of the specific target properties should be included;*

- Details of the maximum 'loan to value' / leverage limits that will apply, including any debt at SPV / intermediate investment vehicle level. Rationale for such limits should also be provided;
- Details of the QIAIF's liquidity status and any redemption provisions; and
- Indication of the QIAIF's expected target market.

Investment in Crypto-Assets

The Guidance reiterates the core requirement of its AIFMD Q&A, namely that the AIFM must in its pre-submission provide information in relation to how the crypto-assets are capable of being appropriately risk managed, including: liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering / terrorist financing risk; and legal and reputation risks. However, the Guidance also adds two important and positive developments:

- Where a QIAIF proposes to invest no more than 10% of its net asset value in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange, no pre-submission is required, provided that shareholder approval is obtained. This aspect of the Guidance directly tracks a successful recent pre-submission, advised by the Maples Group, which resulted in the Central Bank approving a QIAIF to invest in crypto-assets for the very first time³.
- We welcome this level of pro-active transparency, as it demonstrates that where the Central Bank has previously approved a particular proposed crypto-exposure, it is willing for that flexibility to be availed of by other fund promoters. Given the rapid and constant evolution of digital assets as an asset class, we believe that

this is a sensible approach which will allow the Irish AIF regime to remain well-regulated but nimble and able to adapt to market developments; and

- In the case of direct investment in crypto-assets, the pre-submission must include details demonstrating how the proposed depositary is satisfied that it can discharge its safekeeping obligations under AIFMD. This is again encouraging, as it indicates that the Central Bank is open, in principle, to considering the concept of a QIAIF directly investing in crypto-assets.

The Guidance concludes by noting that the Central Bank reserves the right to request other information during a pre-submission, including confirmations from the relevant AIFM and / or fund board, and to amend its pre-submission requirements from time to time. The Central Bank does not commit to any specific time-frame within which to review a pre-submission, but does commit to endeavour to assess and respond in a timely manner, so the recommendation remains to make pre-submissions in good time in advance of the desired authorisation date.

The Central Bank has re-emphasised that it will still expect the AIFMs and fund boards to carry out and document the same standard of due diligence and product governance for any product launch. Nevertheless, the removal of the time necessarily involved in the formal pre-submission process, and the return to the predictability and speed to market of the 24-hour fast-track, is an extremely positive development for the Irish AIF market.

How the Maples Group Can Help

Our Irish Funds & Investment Management group has extensive experience assisting our clients to navigate successfully every one of the pre-submission types set out above. We have also been, and remain, engaged with the Central

³ <https://maples.com/en/news/2022/4/maples-advises-on-first-irish-funds-to-invest-in-crypto-assets>

UPDATE

Bank as a firm and at industry level to ensure the regulatory authorisation regime remains fit for purpose, as part of which we can, if appropriate, bring the experiences and views of our clients to bear.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2021).

July 2022
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