Fund Finance in Ireland

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Ireland is a leading and growing jurisdiction for the global investment funds industry. In March 2026, more than EUR 5.6 trillion of net assets were held in just under 9,450 Irish domiciled funds (including sub-funds). Ireland offers a range of fund vehicles for promoters to establish fund and feeder fund structures with an Irish domicile. Irish vehicles therefore feature regularly in subscription, net asset value (NAV), hybrid, and other fund financings.

Before commencing due diligence on an Irish fund or considering the facility and security documents, it is crucial to first understand the type of Irish vehicle that is involved in the financing and, furthermore, whether the vehicle is a regulated or unregulated fund.

Regulated fund structures

The Central Bank of Ireland (CBI) is responsible for the authorisation and regulation of investment funds and managers in Ireland. The most common Irish regulated fund structures encountered in fund financings are listed below.

Irish collective asset-management vehicles (ICAV): ICAVs are incorporated under the Irish Collective Asset-management Vehicles Act 2015 (as amended) and have a bespoke corporate structure which makes the ICAV a popular choice of fund vehicle. Investors in an ICAV subscribe to shares and become shareholders of the ICAV.

Investment limited partnerships (ILP): ILPs are constituted under the Investment Limited Partnership Act 1994 (the ILP Act, as amended) as a partnership (such that the partnership does not have a separate legal personality from its partners) and are continuing to gain in popularity in Ireland following the enactment of the Investment Limited Partnerships (Amendment) Act 2020, which modernised and amended the ILP Act to bring the ILP in line with comparable partnership structures in other leading fund jurisdictions. The general partner of the ILP is responsible for the management of the ILP and the investors in an ILP subscribe to partnership interests as limited partners with the benefit of limited liability.

Variable capital investment companies (Investment Companies): Investment Companies are incorporated as a public limited company under the Companies Act 2014 (as amended). Although Investment Companies are still encountered in Ireland, the Investment Company has been superseded by the ICAV and the ILP as the vehicles of choice for newly established funds.

Following the introduction of the ICAV in 2015, this particular vehicle overtook other fund structures to become the most common Irish fund vehicle encountered in fund finance transactions. ILPs are also continuing to gain in popularity and offer an attractive option to promoters who favour a partnership structure over the corporate structure of an ICAV.

Other regulated structures in Ireland include Unit Trusts, which are constituted under a trust deed with a trustee (who holds legal title to the fund's assets) and a management company responsible for the management of the fund, and Common Contractual Funds which are unincorporated bodies established under contract law providing investors with certain rights as co-owners of the fund's assets. Unit Trusts and Common Contractual Funds are rarely encountered in fund financing transactions in Ireland.

Irish regulated funds may be established as Alternative Investment Funds (AIF) under the EU (Alternative Investment Fund Managers) Regulations 2013 (as amended most recently by the EU (Alternative Investment Fund Managers Amendment) Regulations 2026, implementing AIFMD II) or as Undertakings for the Collective Investment in Transferable Securities (UCITS) under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (as amended most recently by the European Union (Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2026, implementing UCITS VI) other than ILPs, which may be established as AIFs only. In fund financing transactions in Ireland, funds and feeder funds with an Irish domicile will commonly be AIFs and, in particular, Qualifying Investor AIFs (QIAIF). There is a 10% leverage limit for UCITS, and this, coupled with the fact that UCITS may only borrow for temporary purposes, means that UCITS are encountered in fund finance transactions less frequently than AIFs.

Regulated funds may be established as standalone funds or take the form of umbrella funds with one or more sub-funds. In umbrella structures, the principle of segregated liability applies to each sub-fund, meaning that the assets of each sub-fund are legally separate and each sub-fund will only be liable for its own debts and liabilities.

Guarantees and security from regulated funds

The rules governing the ability for an Irish QIAIF to grant guarantees and security have been a focus for reform in the Irish fund finance market in recent times, and changes were implemented on 5 May 2026 which now facilitate Irish QIAIFs granting guarantees and security on Irish fund financings. This will be particularly relevant to master/feeder structures where the Irish QIAIF acts as a feeder fund rather than the borrower and might therefore be expected to guarantee and provide security for the borrower's liabilities to a lender. Prior to the recent regulatory changes, the Irish QIAIF feeder fund could not give security directly to the lender in such structures and instead was required to grant security to the borrower (or the intermediate fund into which it invests) to secure its obligations to the borrower (most commonly its obligation to fund uncalled capital to the borrower under subscription documents). The borrower would then assign its interest under that security in favour of the lender, a structure known as "cascading

security". Under the new rules, the feeder fund will be able to grant security directly to the lender and cascading security is no longer required for the above referenced purpose. However, cascading security remains a well-established and flexible tool that will continue to be deployed in appropriate situations.

The recent updates to the rules relating to the ability for an Irish QIAIF to grant guarantees and security are important points that should allow structuring of fund finance transactions with Irish counterparties in a form commonly seen in other major fund jurisdictions.

Unregulated fund structures

Unregulated fund vehicles are also common in Irish fund financing transactions either as the main fund vehicle or the asset holding vehicle under a regulated fund structure.

Common unregulated fund structures in Ireland are the following.

Section 110 Companies: Section 110 Companies are usually incorporated as a designated activity company (DAC) under the Companies Act 2014, a corporate entity structured to comply with the requirements of Section 110 of the Taxes Consolidation Act 1997. A Section 110 Company will benefit from a specific tax regime (the details of which are outside the scope of this guide) provided that it satisfies the necessary criteria upon incorporation, and on an ongoing basis, in order to preserve its status. Although Section 110 Companies are unregulated fund vehicles, if a Section 110 Company is part of a structure including an Irish regulated fund, specific consideration should be given to whether the Section 110 Company will need to comply with the Irish rules and regulations which apply to Irish regulated funds.

Limited partnerships (1907 Act Partnerships): Unregulated funds in Ireland may also be established as limited partnerships under the Limited Partnerships Act 1907. 1907 Act Partnerships were, historically, uncommon in fund financing transactions. However, we are now more frequently encountering unregulated 1907 Limited Partnerships on subscription, NAV, preferred equity, and umbrella financings in Ireland. 1907 Act Partnerships have a general partner that is responsible for the management of the 1907 Act Partnership and investors which subscribe for limited partnership interests as limited partners. A 1907 Act Partnership operates in a similar way to limited partnerships established in other jurisdictions including, for example, under English law, in terms of unlimited liability for the General Partner (GP) and limited liability for other Limited Partners (LP), provided they leave the operation of the 1907 Act Partnership to the GP. Investors will usually make a nominal initial capital contribution and will then contribute capital to the fund via loans to the 1907 Act Partnership.

ANATOMY OF A TRANSACTION

Due diligence

After determining the type of fund vehicle in the structure, and whether the vehicle is regulated or unregulated, due diligence is a crucial starting point on any fund financing transaction in Ireland. As emphasised elsewhere in this guide, due diligence often informs the legal and commercial terms of the facility and security documents, and it is important for a lender (and its counsel) to determine at an early stage whether there are any issues in the fund documents that should be corrected or dealt with prior to funding, either

by amending the terms of the fund documents or by including specific provisions in the financing and security documents. Key issues to review in fund documents are set out in the Due Diligence section of the *Fund Finance Term Sheets and Due Diligence* chapter (page 36). The purpose of this section is, therefore to supplement and expand upon certain considerations from an Irish perspective, and this Due Diligence section should be read alongside the below when reviewing fund documents for an Irish fund.

What are the fund and service provider documents for an Irish fund?

A number of service providers will be appointed to manage and act on behalf of an Irish fund. For AIFs, the directors of an ICAV or Investment Company, or the GP in respect of an ILP, are required to appoint an Alternative Investment Fund Manager (AIFM) with responsibility for the management of the fund. The AIFM will often delegate certain functions to other service providers, including an investment manager and administrator. The Alternative Investment Fund Managers Directive 2011 (AIFMD, as amended) also imposes an obligation on the AIFM to appoint a third-party depositary for the fund, which will have the specific role of safeguarding and verifying the ownership of the fund's assets.

Therefore, when undertaking due diligence on an Irish vehicle, it is critical to review the fund documents (i.e. the incorporation and investor documents) and the service provider documents of the fund, as these documents will together determine whether the fund is permitted to enter into the financing and how it operates. For a regulated Irish fund (ICAV, ILP or Investment Company), the fund and service provider documents will include the following.

- **Constitutional documents**, namely: the instrument of incorporation for an ICAV; the memorandum and articles of association for an Investment Company; or the limited partnership agreement for an ILP and memorandum and articles of association for its GP. It is also important to confirm that the umbrella fund and its sub-fund have been approved by the CBI by obtaining a copy of the letter of authorisation for the umbrella fund and letter of approval for each relevant sub-fund that is a party to the financing.
- **Section 110 Company:** If there is a Section 110 Company in the structure, the lender should also obtain evidence that the Section 110 Company has filed the applicable notifications to the Irish Revenue Commissioners in respect of Section 110 of the Taxes Consolidation Act 1997 or, in the case of a newly incorporated Section 110 Company, an undertaking that the Section 110 Company will file such notification within the period prescribed by the Taxes Consolidation Act 1997.
- **Offering documents**, including the prospectus or offering memorandum and, for sub-funds in an umbrella fund structure, the supplement to the prospectus/offering memorandum. The offering documents will contain an overview of the fund's investment mandate, risk factors, and operations, including the process for calling capital and making distributions to investors. It is crucial to check the offering memorandum against the other fund and service provider documents to reveal any inconsistencies with the contractual terms governing the fund's relationship with its investors and service providers, as it is the contractual terms set out in these documents that a lender will need to rely on in the event of an enforcement of its security over the assets of the fund including, in the case of subscription-backed financing, the fund's rights to call capital from investors.

- **Subscription documents**, which will often take the form of a subscription agreement between the investor and the ICAV, Investment Company or ILP. It is also common for an Irish fund to enter into side letters with individual investors which (as noted elsewhere in this guide) supplement and, in some cases, override specific terms of the constitutional documents and offering documents in respect of a specific investor's capital commitment to the fund.
- **Service provider documents**, which will usually include: a management agreement with the fund's AIFM/manager; an investment management agreement (and, in some cases, sub-investment management agreements); an administration agreement; and a depositary agreement containing the terms upon which the depositary will oversee, control and, as applicable, hold the assets of the fund and any sub-custodial arrangements. These contracts contain the terms upon which key service providers are appointed to manage the fund and, as will be explored in further detail below, should be reviewed carefully by a lender and its lawyers who may need to rely on the role of these entities in the event of a security enforcement.

For unregulated Section 110 Companies and 1907 Act Partnerships, the key documentation to review as part of the due diligence of the fund will, similarly, include the constitutional documents (for a Section 110 Company) or limited partnership agreement (for a 1907 Act Partnership), subscription documents, and service provider documents for the Section 110 Company or 1907 Act Partnership. The subscription documents for a Section 110 Company will usually take the form of a note issuance agreement for the issuance of Profit Participating Notes (PPNs) to investors. The limited partnership agreement is the primary subscription document for the 1907 Act Partnership and will contain the terms governing capital and loan commitments of investors in the 1907 Act Partnership. The key service providers to a Section 110 Company will usually include a registrar and paying agent (which will have responsibility for issuing and making payments under the PPNs and maintaining the register of noteholders) and an administrator. The 1907 Act Partnership will usually contract through its GP and may also appoint an Administrator, AIFM and/or Depositary or Custodian.

Power to borrow, guarantee and grant security

The constitutional documents for Irish fund entities, both regulated and unregulated, should include broad powers to borrow and create security, but the terms of the fund and service provider documents should be carefully reviewed to confirm, in particular, whether there are any limitations on leverage and which parties have authority, and/or whose authorisation is required, to approve the borrowing and granting of security on behalf of the fund.

The constitutional documents of each fund can differ, but usually the directors of an ICAV, Investment Company or Section 110 Company will have the authority to borrow and provide security on behalf of a fund and enter into the relevant finance and security documents. For an ILP or 1907 Act Partnership, the GP will have this authority. The fund and service provider documents should be reviewed to identify whether the consent of other parties – for example, the AIFM or investment manager – is required to approve the fund borrowing and entering into security. A lender would usually require evidence that the AIFM or investment manager has approved the financing and security, where the fund documents require such approval to be obtained. It is not an uncommon request from

a borrower for an investment manager or sub-investment manager to sign the finance documents on behalf of the fund and, in some cases, without further authority from the board of directors of the fund or, as applicable, the GP. In such cases it is vital to ensure that sufficient delegated authority exists for the investment manager or sub-investment manager to legally bind the fund to borrow, guarantee, and grant security.

As with any due diligence process, it is also important to ensure that the fund is permitted to grant security over the specific assets that will form part of the collateral. The fund documents may expressly set out the assets over which the fund can grant security (for example, in the context of a subscription-backed facility, a right to grant security over the unfunded capital commitments of investors); however the fund documents are not always as specific. As a minimum requirement, the fund documents should include a general permission for the fund to grant security over its assets.

The terms of the fund documents should be reviewed alongside applicable regulatory and legal restrictions. For example, leverage limits may apply to a fund in addition to any limitations set out in the fund documents. Also, as noted above, UCITS have a 10% leverage limit and can only borrow debt for temporary purposes. If the structure includes a fund invested in Irish real estate, the CBI also imposes a 60% Loan-To-Value (LTV) limit where more than 50% of the value of the fund is attributable to Irish property.

Right to call capital and the capital call process, including waiver of defences

For Irish funds, it is most commonly the directors of the ICAV, Investment Company or Section 110 Company, or the GP in respect of an ILP or 1907 Act Partnership, who have the authority to determine when capital calls are made by the fund. This role is often delegated to a fund service provider, for example, the AIFM or investment manager, and the due diligence process should reveal which entities in the structure have the right to call capital on behalf of the fund. In addition, the administrator typically assists in the capital call process, for example, by issuing capital call notices to investors and maintaining the shareholder or limited partner register, although the administrator would not usually have any discretion to determine when capital calls can be made. A lender providing a subscription-backed facility should carefully note as part of the due diligence process which entities need to authorise a capital call or otherwise have a role in the capital call process, as it is likely that contractual commitments from each such entity in favour of the lender will be required.

It is also important in the context of a subscription-backed financing in Ireland, as elsewhere, to understand when capital calls can be made on investors. The fund documents will typically provide for calls to be made on a "Dealing Day" (as defined in the relevant constitutional documents of the fund) which falls during the investment period, subject to certain scenarios where a capital call might be permitted after the investment period has expired. Lenders should ensure that the terms of the fund documents permit capital calls to be made for the purposes of paying liabilities under the facility, including after the expiry of the investment period.

Irish fund vehicles will usually be required to calculate the NAV of the fund and the net asset value of its units/shares in order to determine the number of units/shares that will be issued to an investor in respect of a capital call. If it is not possible to determine the NAV, this will have a detrimental effect on the ability of the fund to issue capital calls to its investors, including in situations where such capital calls are required to repay a

facility. It is therefore crucial to review the fund documents to determine the situations or events that permit the fund to suspend the calculation of the NAV (noting that such situations would usually include the insolvency of the fund or market events which have the effect of preventing the fund from accurately valuing the fund's assets) and what impact this might have on the fund's ability to issue a capital call under the terms of the fund documents. The investors will not be issued shares/units when they commit capital if the capital has not yet been called. The fund documents will provide that investors will have shares/units issued to them each time they fund a call notice, but it would be uncommon for them to be provided with any "hard copies" of these. Holdings will be recorded on a register maintained by the administrator.

As noted in the main Due Diligence section of this guide, lenders will often expect a "waiver of defences, set-off and counterclaim" provision to be included in the fund documents pursuant to which the investors agree to fund a capital call notwithstanding the occurrence of certain events. In an Irish context (and in addition to the scenarios explored in the section entitled Subscription Financing: Due Diligence, page 37), this waiver would usually include an undertaking to fund a capital call in the event that the NAV is suspended (and shares/units/partnership interests in the fund cannot be or are not issued) or the fund vehicle is insolvent. The issues to be considered and implications of the inclusion of general or more specific "waiver" language are dealt with in the Due Diligence section of the *Fund Finance Term Sheets and Due Diligence* chapter (page 36) and in the *Subscription Facilities* chapter (page 57) of this guide.

LEGAL DOCUMENTATION: THE FACILITY AGREEMENT

As the fund finance market is dominated by non-Irish lenders, in most cases the facility agreement will not be governed by Irish law. There are, however, a number of Irish-law-specific points that should be included or addressed in a non-Irish-law-governed facility agreement.

Who needs to be a party?

For an Irish fund, in the vast majority of cases the fund vehicle itself (acting through its GP in the case of an ILP or 1907 Act Partnership) is the only required party but the GP may also be required to sign certain finance documents in its own capacity on certain transactions. In most cases it will be the directors of the relevant entity or its duly appointed attorney who will execute the facility agreement on behalf of the fund. As noted above, service providers may have a role in the capital call process or, in the case of the depositary or sub-custodian, hold assets that are registered in their name.

However, notwithstanding these roles, the fund service providers are not usually required to sign the facility agreement. If contractual undertakings are required from the service providers, these would usually be included in a separate side letter in favour of the lenders or, in the case of the depositary or sub-custodian, might be included in a depositary control deed. Any sub-custody arrangements should also be reviewed to determine if anything additional is required.

Until the recent changes to the AIF Rulebook – where the transaction included a master/feeder structure involving an Irish regulated feeder fund vehicle and a master fund which is the borrower – the Irish feeder fund would not have signed the facility agreement and

would usually have provided any security under a cascading security structure. With the removal by the CBI of the restrictions on "third party" security (as further explored in the section above entitled "Guarantees and security from regulated funds"), this has provided an option for the feeder fund to be a party to the finance documents and grant security directly to a lender.

Change of control

Change of control provisions in respect of an Irish vehicle may sometimes be subject to negotiation on fund finance transactions. Holding shares in an ICAV or limited partnership interests in an ILP or 1907 Act Partnership does not give the holders (i.e. investors) "control" of the vehicle or a right to appoint/remove directors. As a result, the usual approach in non-fund finance transactions (e.g. leveraged finance transactions) of triggering a change of control in the event that there is a change to the shareholder(s) of the borrower may not be possible where the borrower is an Irish fund.

The change of control clause is usually modified to include, for example, a change of AIFM or investment manager if such AIFM or investment manager is connected with the sponsor and in some cases Key Person exits (although Key Person exits are commonly dealt with separately in the facility documentation). For ILPs and 1907 Act Partnerships a change of control of the GP is often included. A change of control of the manager will need to be considered on a case-by-case basis. For example, if the manager is unrelated to the sponsor, it would be unusual to include a change of control referable to it. Changes in key service providers will also be dealt with in the covenants as referenced below.

Representations and warranties, covenants and events of default

There are some Irish-specific modifications that will need to be made to the facility agreement in respect of representations and warranties, covenants, and events of default. The representations as to status and regulatory status will need to be carefully assessed on a case-by-case basis for the particular fund vehicle. In an umbrella fund, for example, representations as to status are typically given in respect of both the umbrella and any relevant sub-fund and, to the extent there are asset holding vehicles in the structure, the Section 110 Company and/or 1907 Act Partnership holding such assets. Representations and covenants in relation to the fund documentation, constitutional documents and subscription documents must be carefully reviewed to ensure that they correctly reference the relevant documents for the fund, which may vary on a vehicle-by-vehicle basis, and any service provider documents relevant to the transaction, and to pick up any points which may have arisen from the due diligence on the fund.

Where the structure includes an Irish feeder fund which is not a party to the facility agreement, the representations may be given by the borrower in respect of such Irish feeder vehicle and covenants may be given by the borrower to procure compliance by the Irish feeder with the relevant terms of the facility agreement.

It is common in Ireland, as in other jurisdictions, to include prohibitions or restrictions on the borrower or other funds in the structure amending or changing the key service provider documents or replacing key service providers. There can be some negotiation on the extent to which the fund should be permitted to amend or change the service provider documents subject to an agreed notice period or to incorporate required regulatory driven changes, or if consent of the lender should be required. In cases where a

service provider has provided a side letter in favour of the lender as part of the security package, it would usually be a condition to appointing any replacement that the new service provider must also provide such a side letter in favour of the lender.

As the tax treatment of the fund and the facility is usually a key consideration, a careful review of the facility documentation from an Irish tax perspective is also undertaken. This will focus, for example, on withholding tax as well as tax compliance. For example, in respect of a Section 110 Company, representations and covenants in relation to its status as a Section 110 Company and ongoing compliance with the legislative provisions will be included.

Where the representations and covenants have been modified, as described above, most of the events of default will not need to be modified. There are, however, certain insolvency references and processes specific to Ireland that will need to be included in insolvency-related events of default, and certain regulatory events of default will commonly be required. In a subscription-backed facility, a suspension of NAV event of default may also be considered.

Segregated liability – limited recourse and non-petition

For regulated Irish umbrella funds, well-settled language in the Irish market is included in facility agreements that provides that one sub-fund does not have responsibility for the liabilities of another sub-fund, and creditors cannot have recourse to another sub-fund's assets for amounts owed or incurred by a sub-fund with which the creditors have contracted. This language is required to acknowledge the segregation of liability between sub-funds in an umbrella fund structure. There are usually some exceptions to the limitation on liability, for example, in the event of fraud.

Where a Section 110 Company is involved, it is a common borrower request that a clause is included in the finance documents limiting recourse to the specific assets over which security has been taken and restricting the lender's ability to petition for a winding up of the vehicle if it does not pay its debts. While the drafting is reasonably standardised, it does need to be reviewed in the context of the particular deal. For example, it is not appropriate that there is no recourse to a shareholder on a capital call facility. In our experience, limited recourse and non-petition references are frequently not included in term sheets, which can lead to issues if this is then requested as part of negotiations on a facility agreement, and it is therefore helpful to include such requests in early negotiations.

Conditions precedent

The required conditions precedent will not be dissimilar to those required in other jurisdictions and will include the constitutional documents and fund documents, resolutions, certificates, and finance and security documents. The market approach to opinions in Ireland on fund finance transactions is for the borrower's counsel to provide the due incorporation and capacity opinion and lender's counsel to provide the enforceability opinion in respect of Irish-law-governed documents.

LEGAL DOCUMENTATION: THE SECURITY AGREEMENTS

The required security will vary depending on the type of facility and the fund structure involved in the transaction. The type of security that is common in fund finance transactions is addressed elsewhere in this guide, and should be read in conjunction with this section on security in an Irish context. It is, however, important to emphasise the importance of due diligence and gathering a full understanding of the vehicles involved and how and where the assets of the fund are held, before drafting any security agreements. This exercise will be crucial in identifying what is required from a security perspective. A number of chapters could be written on security on fund finance transactions in an Irish context, but this section identifies some of the key points that arise most frequently.

Is Irish law the appropriate governing law of the security?

Due diligence is essential in this regard. From an Irish law perspective, the assets over which security is most often granted on fund finance transactions include:

(i) capital call rights;

(ii) shares, limited partnership interests (including interests in loans in the case of a 1907 Act Partnership) and profit participating notes;

(iii) contracts;

(iv) cash and securities accounts; and

(v) fees payable to GPs or managers.

If the governing law of the relevant contract, or the relevant fund documents and subscription agreement which includes the rights to call capital, is Irish law-governed, Irish law security will be required. The same analysis applies in respect of security over material contracts (for example, a management agreement documenting fees payable to the manager or GP); if the contract is Irish-law-governed, Irish security will be required. For security over cash and securities accounts, Irish law security is usually granted only in cases where the account is an Irish account, for example, a book entry securities account opened with an Irish depositary (security over bank accounts is explored further below).

If the entity that issues shares, limited partnership interests or profit participating notes is established in Ireland (e.g. an ICAV, an ILP, a 1907 Act Partnership or a Section 110 Company), Irish law should be the governing law of the security over any related rights, including capital call rights of the fund (in the context of a subscription-backed facility) or share/limited partnership interests (in the context of a NAV facility).

Bank and securities accounts

Careful due diligence is required to determine where a bank account is actually located. As a general rule of thumb, if the IBAN of a cash account commences with "IE" it is an Irish account, over which Irish security should be taken. Given the international nature of the Irish funds industry, the assets in which a fund is investing could be located anywhere in the world, and it is not normally practical or cost effective to take security in multiple jurisdictions.

From an Irish regulatory perspective, the depositary of the Irish fund is obliged to maintain a clear and up-to-date record of all fund holdings, and in many cases, assets are also registered in the name of the depositary. As part of the depositary fulfilling its duties, the depositary will maintain a securities account or electronic register of all such holdings. Irish law security is often taken over this securities account. A key due diligence point is to get details of the account identifier applicable to this Irish account. Depositaries in Ireland have different ways of expressing this identifier.

As is the case in many jurisdictions, security over cash and/or securities accounts is typically coupled with certain control rights in favour of the lender. These are either included in a control agreement or could be included in the notice of creation of security, which is then acknowledged by the relevant counterparty. This counterparty will be the account bank for cash accounts or the depositary and, as applicable, sub-custodian for securities accounts. Where a party other than the fund has execution/transfer rights on the bank mandate, they should also be joined to the control agreement.

Security filings

Unless exempted from the filing requirement (for example, share security and security over bank accounts), security filings will be required to be made in Ireland for security granted by an Irish fund vehicle. For example, security created by an Investment Company or a Section 110 Company should be registered in the Irish Companies Registration Office and security created by an ICAV is registered with the CBI. Security granted by an ILP or 1907 Act Partnership is registered against the name of the GP (where such GP is incorporated in Ireland). Security is usually granted in favour of a security agent/collateral agent, and, if these roles are transferred or taken on by another institution after the security has been filed, a filing noting such change also needs to be made to the relevant registry in Ireland. Where security is created over book debts, a filing called a Section 1001 notification must be made with the Irish Revenue Commissioners.

Security documents can also be drafted under Irish law to obtain the benefits of the Financial Collateral Regulations, although the level of control required means this is the exception rather than the rule.

Consents and perfection – capital call rights

In the vast majority of cases, it should not be necessary to obtain third-party consent to the creation of security over capital call rights, but the fund and investor documents should be reviewed to confirm that this is the case. Security over capital call rights usually takes the form of a security assignment which is perfected by serving a notice of creation of security on each investor. It is not required in order to perfect the security that such notices be acknowledged; although acknowledgements may be necessary on a case-by-case basis, for example, where the notice of security contains undertakings from an investor which need to be contractually agreed (a common example of this would include transactions in which waiver of defences provisions are included in the investor notices, where such language is not adequately covered in the fund documents). It is important, from a lender's perspective, to obtain evidence that notices have been sent, in cases where acknowledgements are not required. Investor portals can be useful in this regard, but a clear understanding of how they work is essential before

making a determination on whether it is appropriate to use them and whether and how in particular these satisfy the notice and other requirements discussed above.

Consents and perfection – shares, profit participating notes, limited partnership interests and fees

It is not uncommon, as in other jurisdictions outside of Ireland, that the constitutional or subscription documents of the issuer of shares, limited partnership interests or PPNs may contain restrictions or impose conditions on the creation of security and/or transfers, which presents obvious problems if shares/interests need to be transferred as part of an enforcement of security. Where security is taken over shares, limited partnership interests, PPNs or fees, the due diligence will determine whether (and what) changes will be required to the constitutional documents or relevant service provider documents, if consents are required from the issuer of shares, limited partnership interests or profit participating notes or the counterparty to a contract under which relevant fees are payable and what additional deliverables may be required to perfect and/or protect the enforceability of the security.





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