

Subscription line financing in Ireland: the ICAV vs the ILP

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Subscription line facilities / capital call facilities (essentially lending against investors' capital commitments), which offer fundamental benefits to both fund managers and investors, have long been used by private equity firms as a method of financing. In this article, we provide a brief comparative analysis of the ICAV and the ILP.

Ireland

As an "on-shore" English-speaking common law jurisdiction with legal concepts that international lenders, fund managers and investors are familiar, Ireland has positioned itself as a leading jurisdiction globally for a wide range of investment funds and continues to become increasingly popular in the subscription line financing space, making it a key jurisdiction for lenders to understand.

The ever-increasing use of Irish funds for private equity structures and the long track record of the funds industry in Ireland, combined with the continued impact of Brexit, mean that the importance of Irish funds is likely to further increase, both for capital call / subscription line facilities and net asset value / asset-backed facilities. Ireland offers managers access to the EU-wide marketing passport for Undertakings for the Collective Investment in Transferable Securities (UCITS) and alternative investment funds (AIFs).

Comparison

This article briefly summarises a few key features which should be considered by lenders when providing subscription line financing to the following Irish domiciled funds which are both authorised and regulated by the Central Bank of Ireland:

- the Irish collective asset management vehicle (ICAV)

- the Irish investment limited partnership (ILP)

Structure

ICAV

The ICAV is currently and has long been the most commonly used Irish fund vehicle in the fund finance space. It's a corporate fund structure that can elect its classification under the US check-the-box taxation rules and has its own legislative regime, the Irish Collective Asset-management Vehicle Act 2015. ICAVs may be established as AIFs or UCITS.

ILP

The ILP is a tax-transparent, common law partnership structure and was reformed pursuant to the Investment Limited Partnership (Amendment) Act, 2020 (the **ILP Act 2020**), since the implementation of the ILP Act 2020 in 2021, 50 ILPs have been established (as at 9 April 2024). The long overdue reforms brought about by the ILP Act 2020 align the ILP more closely with limited partnership structures in other leading international investment fund domiciles such as Luxembourg, Delaware and the Cayman Islands with which international lenders, law firms and finance professionals are familiar. Similar to other partnership fund structures, an ILP is constituted pursuant to a limited partnership agreement (**LPA**) entered into by a general partner (**GP**) and any amount of limited partners, the GP manages the business of the partnership. ILPs are established as AIFs.

Segregated liability

Both ICAVs and ILPs may be established as umbrella funds with statutory segregated liability between their sub-funds.

Constitutional documents

The constitutional document of an ICAV is the instrument of incorporation.

The constitutional document of an ILP is the LPA.

Securing obligations of third parties

ICAVs and ILPs are subject to the same restrictions in terms of guaranteeing or securing or being responsible for the obligations of third parties. However, structuring options are available which provide lenders access to the ICAV or ILP's capital call rights in transactions where the ICAV or the ILP is not the borrowing entity, including cascading pledge arrangements that are the commonly

used solution in fund financing transactions involving an ICAV or ILP (whereby the Irish feeder entity would grant security in favour of the master entity and the master entity in turns makes an onward assignment of such security to the lender). The cascading pledge arrangement is a very well-established security structure in subscription line financing involving Irish funds which provides all the required protections to a lender.

Security filings / perfection

ICAV: Typically, security filings are submitted on closing and no later than 21 days after the creation of security with the Central Bank of Ireland.

ILP: Typically, if the GP is an Irish company, security filings are submitted no later than 21 days after the creation of security with the Irish Companies Registration Office (whereby the security is registered against such GP acting on behalf of the investment limited partnership).

ICAV and ILP: Notices of Assignment are typically delivered to Investors as soon as possible following closing.

How can Ogier help?

Ogier's Fund Finance team has extensive experience in providing legal advice on all types of fund finance transactions across all major financial markets. We regularly advise on a range of fund finance products, including subscription and capital call facilities, NAV and hybrid credit facilities, GP and management lines of credit and fund of fund facilities. The global nature of our team gives us a broad and unique insight into the fund finance market, and we provide cross-jurisdictional advice on structures that include Luxembourg, Irish and Cayman Islands vehicles.

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Key Contacts



Laura Blaney

Senior Associate

Ireland

E: laura.blaney@ogier.com

T: +353 1 584 6770



Laura Holtham

Partner

Ireland

E: laura.holtham@ogier.com

T: + 353 1 639 3000

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