The Irish Investment Limited Partnership (ILP)

A modern and flexible option for private fund sponsors

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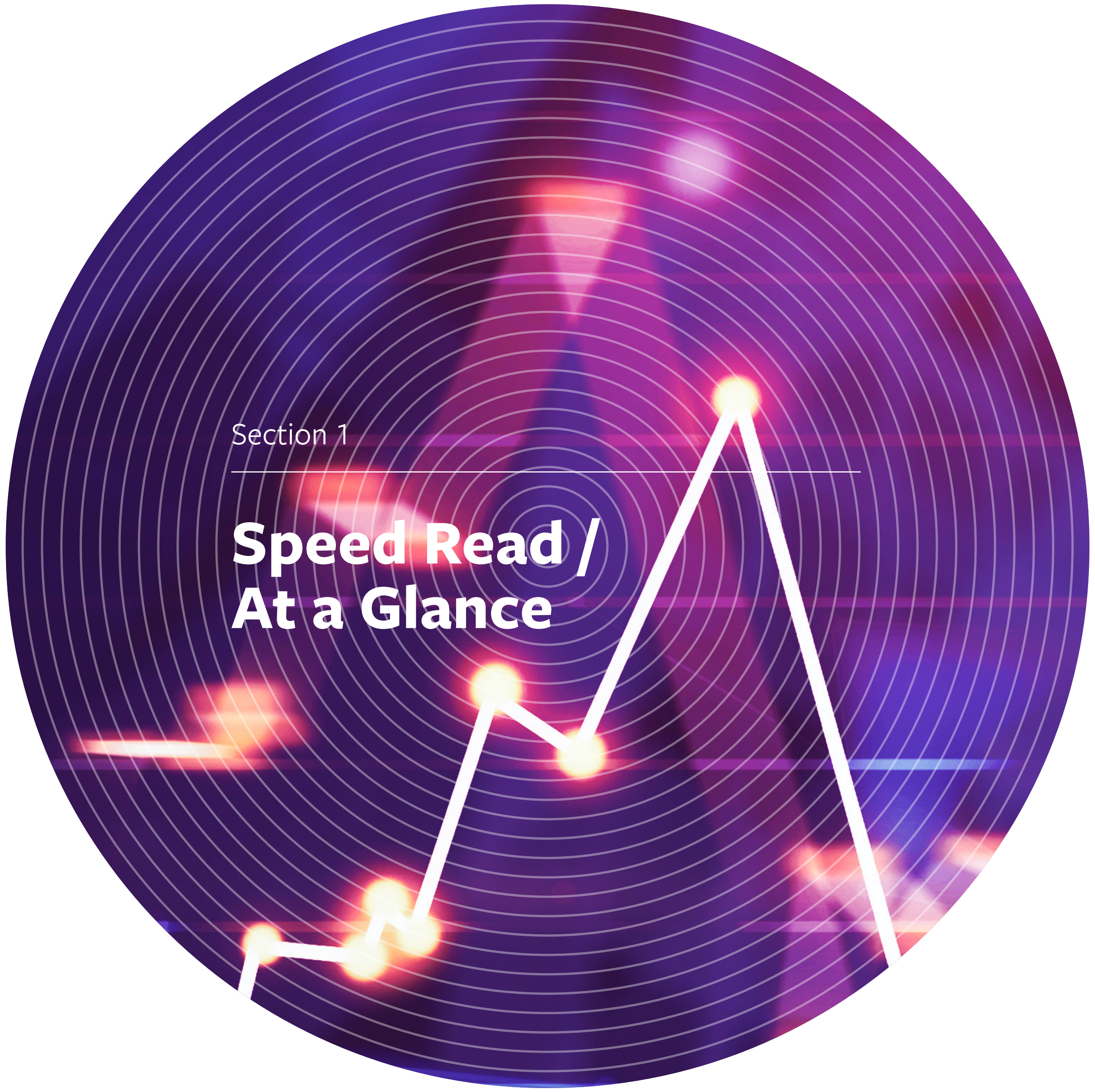


Ireland has a proven track record as a principal EU AIF domicile and a sophisticated ecosystem to support international sponsors. It is also the only English speaking EU domicile with a common law legal system. Following recent reforms to its Investment Limited Partnership ("ILP") structure, Ireland now offers the full suite of preferred legal structures for real asset/ private equity investment, making Ireland a jurisdiction of choice for private equity funds.

The ILP can be structured to suit all major investment strategies and is a suitable vehicle for all types of private fund or real asset strategies such as private equity, real estate, venture capital, infrastructure, credit and loan origination. Hedge fund managers may also find the Irish ILP to be an attractive vehicle.

Investment Limited Partnership

The ILP is an alternative investment fund ("AIF") which is authorised by the Central Bank of Ireland (the "CBI").

In reforming the ILP Act, Ireland benchmarked its approach against limited partnership regimes internationally, which has led to a drawing in of "best in class" style elements found in peer regimes elsewhere.

An ILP is not subject to any mandatory risk spreading obligations and therefore can hold a single asset/highly concentrated portfolio. The ILP legal and regulatory framework:

- provides for a number of "safe harbours" for Limited Partners ("LPs"), thereby allowing them to participate in advisory committees, vote on changes to the Limited Partnership Act ("LPA") and engage in other related activities without losing their limited liability status;
- allows an ILP to be established as an umbrella fund, with segregated liability between sub-funds;
- permits amendments to the LPA to be made in writing via a simple majority of partners (instead of unanimity);
- creates a statutory transfer of assets and liabilities on the admission or replacement of a General Partner ("GP"), so that all rights or property of the ILP vest in the incoming partner or existing GPs;
- stipulates that if the LPA provides that where a partner fails to perform any of its obligations under or otherwise breaches the partnership agreement, the sanctions applicable for the failure of performance or breach will not be unenforceable solely because they are penal in nature;
- provides that the GP of an ILP does not require separate authorisation as an AIF Management Company (assuming it is appointing an external AIF Manager ("AIFM").

An ILP is typically established as a Qualified Investor AIF (a "QIAIF") but may also be established as a Retail Investor AIF (a "RIAIF").

A QIAIF ILP that is managed by an EEA-authorised AIFM can be marketed throughout the EEA under the pan-EEA AIFMD marketing passport.

In addition, a QIAIF ILP:

- benefits from speed to market and a predictable and certain pathway to first close;
- is not subject to material investment restrictions or eligible asset rules.

A closed-ended QIAIF ("CE-QIAIF") is permitted to differentiate between share classes and/or investor participations/interests in the CE-QIAIF, pursuant to recently published CBI guidance.

Section 2

Investment Limited Partnerships

Ireland has recently modernised its ILP fund structure in order to reflect changes in, and to cater for common features utilised within, the global private funds market. Since 1 February 2021, it is possible to establish an ILP which is subject to a modern, flexible regulatory framework. While an ILP may be structured either as a RIAIF or a QIAIF, we expect the QIAIF to be the more attractive of these two alternatives.

This briefing provides a high-level overview of the ILP fund structure, including an ILP's key features and the roles and responsibilities of the GP(s) and LPs, the QIAIF, and the ILP fund authorisation process.

Investment Limited Partnership

The ILP is a regulated common law partnership structure. It is a limited partnership vehicle exclusively for use as an AIF. It is formed under, and subject to, the Investment Limited Partnerships Act 1994 (as recently amended by the Investment Limited Partnerships (Amendment) Act 2020 ("ILP Act") and is subject to authorisation by the CBI.

The ILP is subject to an additional layer of product regulation as a CBI authorised AIF, which is relatively light and tailored to a sophisticated product and investor base. In particular, we do not anticipate the product regulation hindering the incorporation of traditional private fund terms in the LPA and addressing standard investor side letter requirements.

Legal Form and Features

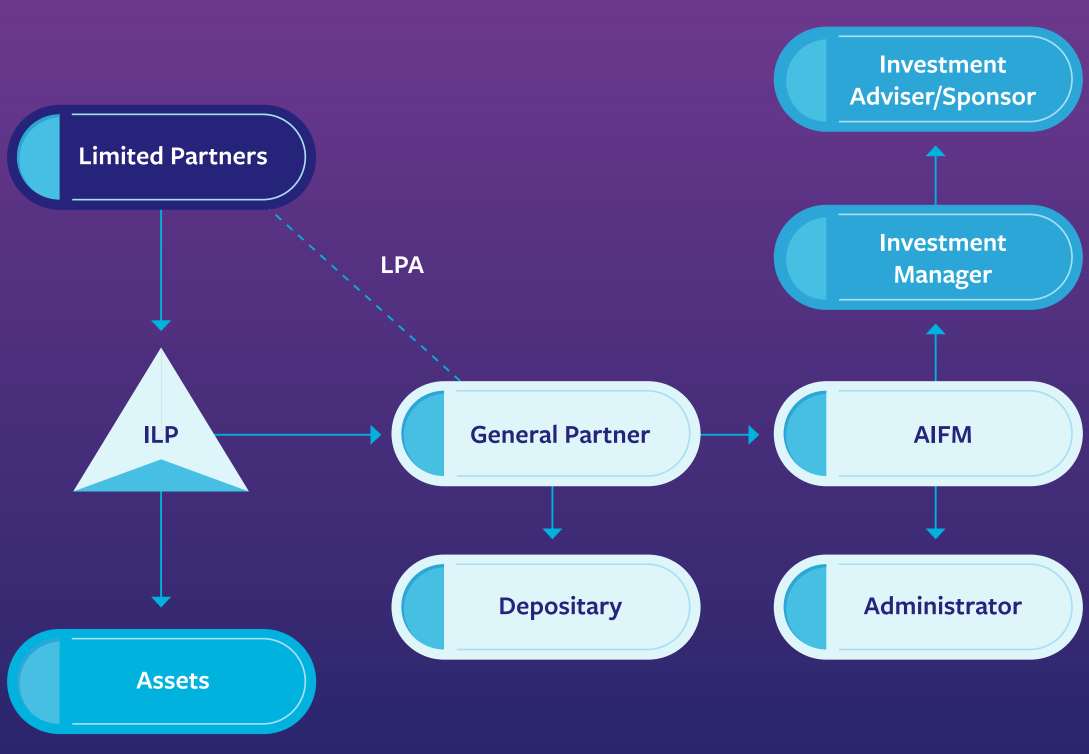
The ILP has a detailed statutory framework which acts as a source of legal certainty for GPs and LPs alike.

The legal form and principal features of the ILP include the following:

- An ILP is constituted by an Irish law governed LPA entered into by one or more GPs on the one hand and any number of LPs on the other hand and requires a CBI certificate of authorisation for its establishment.
- An ILP can be formed as a standalone or umbrella structure with segregated liability between sub-funds. This means it can have multiple sub-funds with statutory ringfencing of assets and liabilities which could be valuable for structuring solutions (e.g. for accommodating co-investment, separating different investor types or liquidity profiles). It also allows sponsors to achieve operational efficiencies with follow-on funds or new strategies by adding new sub-funds on a single platform with existing infrastructure.
- An ILP does not have separate legal personality. The GP is responsible for managing the ILP's business, has personal liability for its debts and obligations and contracts (directly or through its delegates) on its behalf.
- The ILP's assets, liabilities and profits belong jointly to the partners in the proportions agreed in the LPA.
- An LP has limited liability up to contributed capital (or up to the capital which it has undertaken to contribute) and can participate in a number of activities without forfeiting that liability: the ILP Act contains a non-exhaustive, updated, list of such activities.

- An ILP must have as its principal business the investment of its funds and must maintain a registered office and a principal place of business in Ireland.
- The words "ILP" or "investment limited partnership" must be used in the name of the ILP. Provision has been made for the ability to register an "alternative foreign name" outside of Ireland with the CBI's approval.
- ILPs are recognised as tax transparent as a matter of Irish law. As such, the relevant income, gains and losses are treated as accruing directly to the partners in the proportions set out in the LPA and no Irish withholding taxes apply to distributions made by the ILP.
- No Irish stamp duty applies to transfers of ILP interests, while the ILP enjoys exemption from Deposit Interest Retention Tax on interest earned on bank accounts in Ireland held by the ILP. In addition, the provision of each of management, administration and global custody services to the ILP is VAT exempt.
- The ILP Act contains provisions which facilitate the migration of an ILP into and out of Ireland by continuation on a statutory basis.
- In addition to the ILP Act, the provisions of the Partnership Act of 1890 and the rules of equity and of common law apply except where inconsistent with the ILP Act.

Typical Legal Structure



Parties to the ILP

General Partner

GP Eligibility	An ILP must have one or more GPs. There is no requirement for a GP to be authorised by the CBI, provided it appoints an AIFM. A body corporate may act as GP and we anticipate that typically the GP will be a newly incorporated Irish private limited company (although the ILP Act does not exclude having a non-body corporate as GP). The GP's directors are subject to the CBI's fitness and probity regime as pre-approved controlled functions.
Delegation	The GP must appoint an AIFM with responsibility for investment management in accordance with AIFMD, unless the GP itself is an authorised/registered AIFM. The AIFM may delegate in accordance with AIFMD to an investment manager (whether within or outside the EEA), although the CBI will need to approve the appointment of an unregulated investment manager.
Duties	Under the ILP Act the GP's responsibilities include amongst other matters: • consent to admission of new partners; • keeping proper books and records in relation to the ILP; • maintaining a register of LPs and the partner capital accounts; • maintaining a register of beneficial owners of the ILP (i.e. individuals directly or indirectly owning a partnership interest of 25% or more) and reporting that information to the CBI for its central register; • attending to the dissolution of the ILP. A GP may have additional responsibilities under the LPA.
Exculpation	The GP's exculpation and indemnity rights will be subject to statutory limits under the ILP Act.
Change of GP	The ILP Act expressly provides for a statutory novation of assets and liabilities on substitution of the GP without formality to simplify the administration of changes in GPs. However the CBI will need to approve any change in GP.

Parties to the ILP

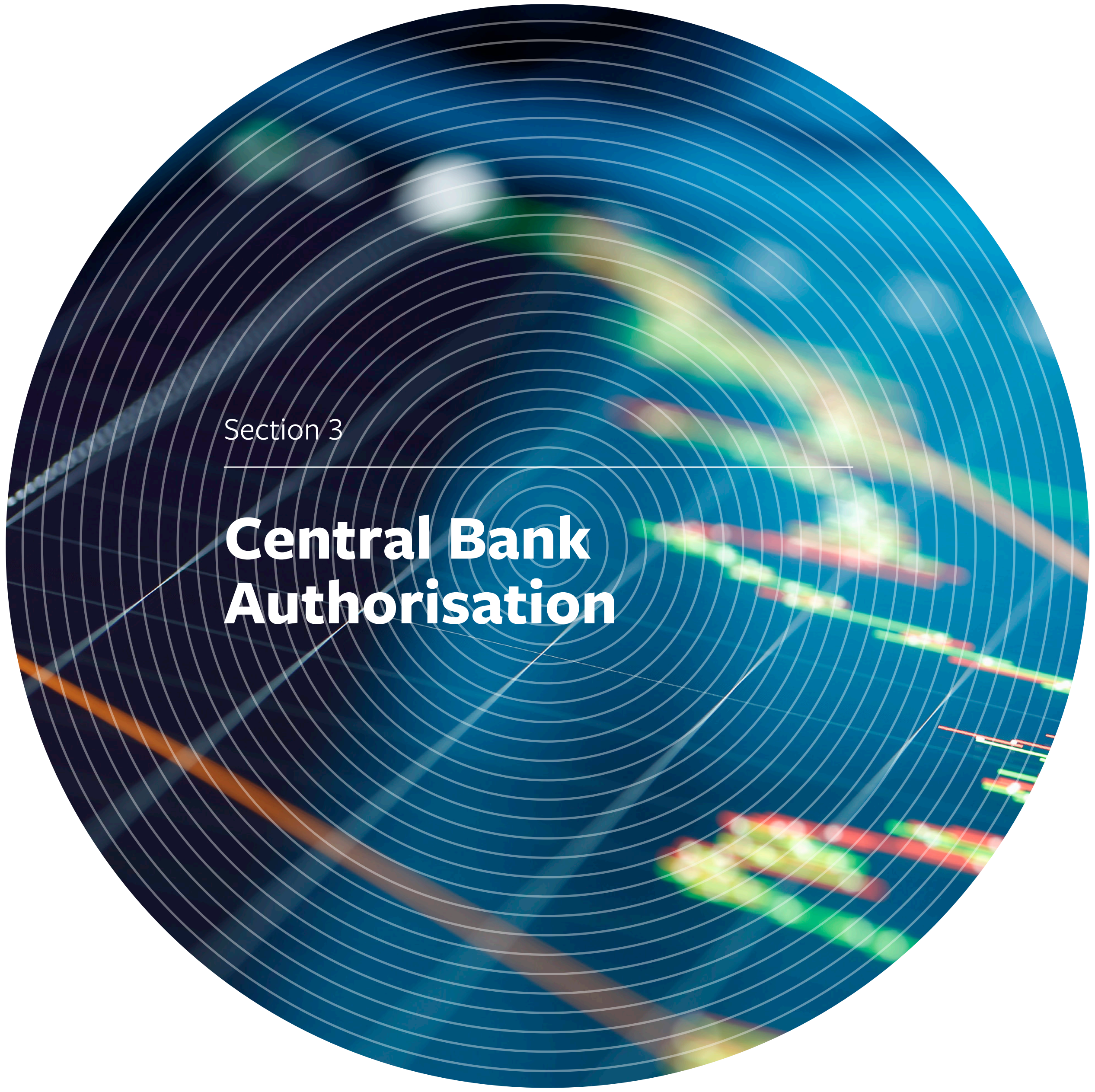
Limited Partners

White List	The LP's liability for debts and obligations of the ILP is limited to the capital contributed (and outstanding commitments). This protection may be forfeited to the extent and while the LP participates in management. The ILP Act sets out a non-exhaustive list of safe harbour activities which an LP can carry out without compromising its limited liability status, including: • serving on a LP advisory committee; and/or • voting on fund matters (e.g. change of investment objective and policy, amendment of the LPA, change of GP or admission/ withdrawal of LP, approval of accounts and resolution of conflicts).
Capital Contributions	Capital contributions by partners may be in cash or in specie (but not by way of a loan). LPs are only required to contribute capital in the circumstances provided for in the LPA.
Withdrawals	Subject to the LPA, capital can be withdrawn once the ILP has a positive net asset value (and LPs will have no continuing claw-back risk).
LP Categories	The ILP Act allows for different categories of LP within an ILP, subject to the terms of the LPA.
Defaults	Where an LP defaults under the LPA (e.g. failure to pay capital calls), the ILP Act confirms that the common remedies (such as forfeiture, forced sale or subordination) are not penal for the purposes of enforceability under Irish law.

Parties to the ILP

Limited Partners (Continued)

LPA Amendments	Alterations can be made to the LPA; a) in writing via the agreement of a simple majority of partners, provided the LPA allows for changes via majority, and/or b) if the depositary certifies that the proposed amendments do not prejudice the interests of LPs and certain other requirements are fulfilled; CBI approval (which generally involves a filing and one day for approval) is necessary for LPA amendments.
Register	The default position, unless varied in the LPA, is that the register of LPs and the partner capital accounts, should be maintained by the GP with inspection rights for the other partners, the depositary, the CBI and any other person (with GP consent).
Information Rights	The ILP Act confers certain information rights on the LPs (in addition to rights applicable under the AIFMD and the CBI's AIF Rulebook e.g. to receive the annual report). Subject to the LPA, LPs (or their agents) may inspect and enquire to the GP regarding the business of the partnership.



Section 3

Central Bank Authorisation

While an ILP may be authorised by the CBI as either a RIAIF or a QIAIF, given the type of investment strategies that are typically pursued by limited partnership vehicles, and the fact that investors in an ILP tend to be institutional and sophisticated investors, most ILPs will likely be QIAIFs and, in the main, CE-QIAIFs.

A QIAIF is a regulated, specialist investment fund targeted at sophisticated and institutional investors, who must meet a minimum subscription requirement of €100,000 as well as certain eligibility requirements. It is the ideal structure for a private equity fund. While a QIAIF is a regulated product, this does not impede the flexibility and features typical for private asset limited partnerships. In particular:

- the customary features for closed ended private funds (such as capital drawdowns, excuse/exclude LPA provisions, carried interest, distribution waterfalls, catch-up payments) are all permitted features for CE-QIAIFs;
- there are no material investment restrictions, eligible asset criteria or restrictions on borrowing;
- there is a full array of liquidity options.

Generally, under the CBI's AIF Rulebook, the capital gains/losses and income arising from the assets of a QIAIF must be distributed and/or must accrue equally to each unitholder relative to its participation in the QIAIF, subject to certain exceptions.

However, the CBI has recently published guidance which permits differentiation by CE-QIAIFs between share classes and/or investor participations/interests[1] ("CE-QIAIF Guidance") with respect to:

- the allocation of the returns of specific assets to particular share classes and/or investors; and/or
- participation by a share class in the CE-QIAIF other than on a pro rata basis.

According to the CE-QIAIF Guidance, a CE-QIAIF will be permitted to establish differentiated share classes to reflect one or more of the following features: issuing interests other than at net asset value and without prior CBI approval; excuse and/or exclude provisions; stage investing and/or management participation.

This is subject to compliance with a number of general conditions, applicable to all of the above features, as well as specific conditions applicable to one or more of them.

Since the ILP is an AIF, it must appoint an AIFM. As noted above, while the AIFM may act as GP, this would be unusual given the personal liability dimension.

One of the advantages of appointing an EEA-authorised AIFM, is that the QIAIF can be marketed throughout the EEA, without further authorisation requirements. This ease of access to the EEA market means that the ILP can work well as part of a global fund platform (whether as a parallel fund to an offshore fund or as master fund in the overall structure).

An ILP, like other QIAIFs, will need to have additional service providers such as an authorised Irish depositary (per AIFMD), a CBI authorised fund administrator (save where this function is retained by the AIFM) and an auditor.

Certain QIAIFs, such as a QIAIF that materially invests in illiquid assets, may opt to appoint a depositary of assets other than financial instruments ("DAoFI").

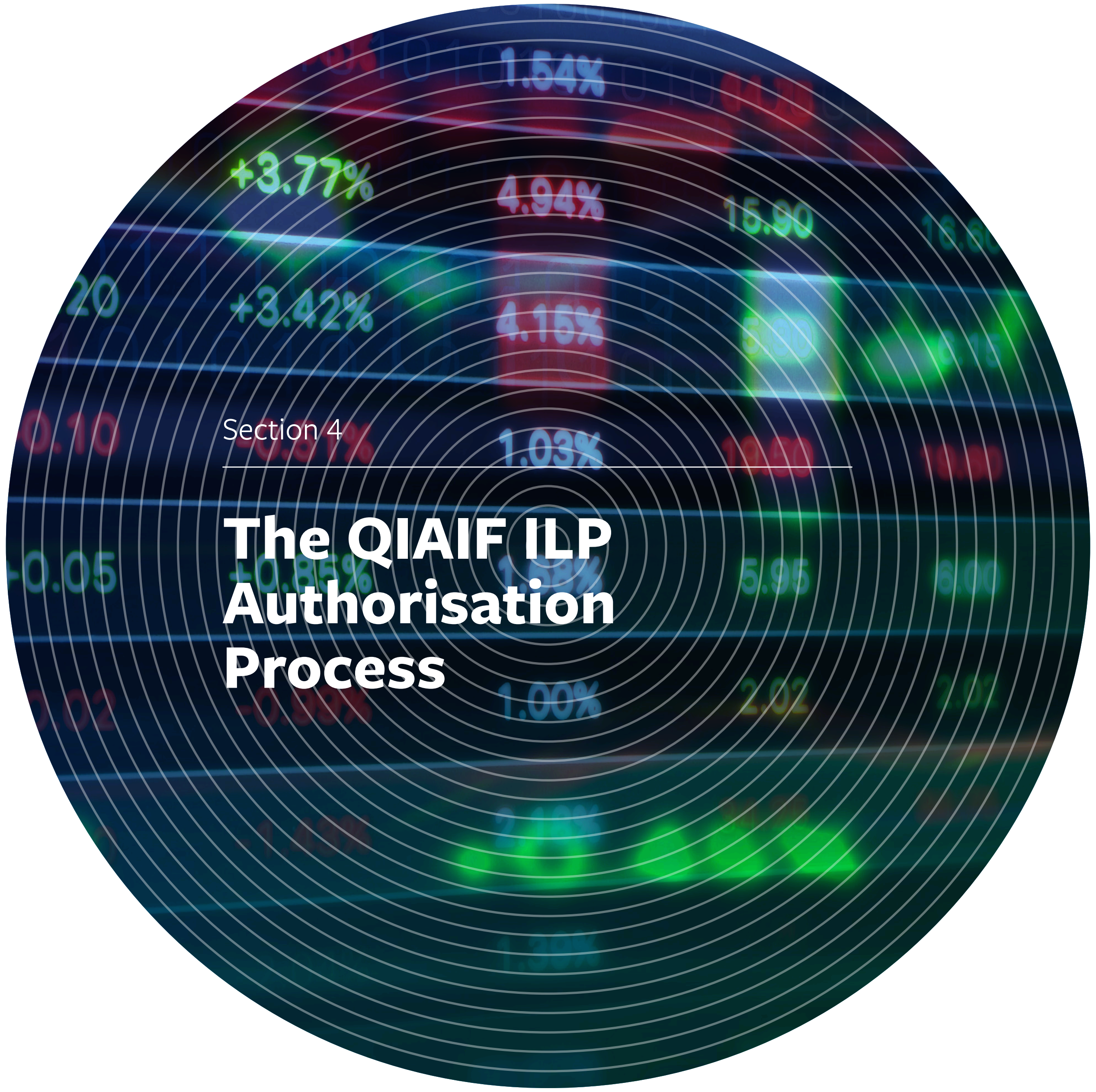
1 In the context of the CE-QIAIF Guidance, references to "shares" or "share classes" includes reference to the nature of the participation in the CE-QIAIF (i.e., depending on the legal structure, this may be by way of units, share classes or, where the product is not unitised (e.g., in the context of an ILP), participations/interests).

Key Rules for QIAIFs

Qualifying Investors	QIAIF ILPs are open to professional or well-informed investors who are: • self-certified in writing as being informed investors; • MiFID professional clients; or • appraised by an EU regulated institution as having an appropriate level of expertise, knowledge and experience.
Minimum Investment	QIAIFs are subject to a minimum initial subscription requirement of €100,000 (or equivalent). The GP may exempt the management team from this minimum capital commitment.
Investment Restrictions	No material investment restrictions or eligible asset rules apply. To the extent an ILP directly originates loans (i.e. a loan-origination QIAIF), it will be subject to additional investment restrictions and specific CBI requirements. An ILP is not subject to any mandatory risk spreading obligations and therefore can hold a single asset/highly concentrated portfolio.
Borrowing/ Leverage	No limits on borrowing or leverage apply subject to the limits disclosed in the prospectus.
Liquidity	QIAIFs may be open-ended, limited liquidity or closed-ended. In the case of a CE-QIAIF, the ILP must set out the term in the fund documents. Where redemptions are permitted, there is a full range of liquidity management tools including side pocket style arrangements, gating, notice periods, liquidity fees, in-specie redemptions etc. An umbrella ILP will be able to establish sub-funds with different liquidity profiles.

Key Rules for QIAIFs

Fund Changes	CBI approval/noting is required for changes to the prospectus and constitutional document and material contracts. Certain changes, such as a change to the investment objective or fee increases beyond disclosed limits, require investor approval.
Share Differentiation	As set out above, a CE-QIAIF may differentiate between share classes and/or investor participations/interests in the CE-QIAIF with respect to: • the allocation of the returns of specific assets to particular share classes and/or investors); and/or • participation by a share class in the CE-QIAIF other than on a pro-rata basis.
Downstream Structuring	A QIAIF is generally able to establish/invest through portfolio holding company structures subject to meeting disclosure and some other CBI requirements.
Transparency	A QIAIF must publish a prospectus addressing minimum disclosure requirements in AIFMD and the CBI's AIF Rulebook. It will also need to produce an annual report each financial year and comply with periodic CBI reporting obligations.



Section 4

The QIAIF ILP Authorisation Process

An ILP authorised as a QIAIF must be approved by the CBI but will usually be able to avail of the CBI's 24-hour approval process, once all parties to the structure have been previously approved/cleared by the CBI.

The pre-formation stage items, depending on the circumstances, may take in the range of 3-6 weeks, although this time-scale is likely to be reduced where the relevant fund is a sub-fund in an umbrella ILP. This stage includes:

- Establishing the GP and obtaining CBI approval of GP directors.
- Preparing the prospectus or private placement memorandum ("PPM"), together with Supplemental PPM for initial fund (if the ILP is established as an umbrella fund), LPA and material contracts (in line with CBI requirements).
- Identifying and negotiating terms with eligible entities to act as AIFM, depositary and administrator.
- If applicable, completing CBI clearance application for any investment manager (N/A for an investment adviser).
- Note: "pre-marketing" filing by the AIFM may be required once the Cross-Border Distribution Directive is tranposed in August this year.

Establishment

CBI authorisation letter issues within one business day of filing by GP of:

- LPA executed between GP and initial LP (e.g. proposed carry LP).
- Final PPM and executed material contracts with AIFM, any investment manager/ adviser, depositary and administrator.
- Completed CBI application materials.

The ILP is then established for purposes of the ILP Act.

AIFM undertakes AIFMD marketing notifications (although AIFMD provides for a 20 day working period, CBI usually processes the AIFMD passport notifications within 5-10 business days).

First Close

To the extent negotiations with first close investors result in LPA changes, the amended and restated LPA will need to be filed with the CBI for noting and approval.

If applicable, initial LP withdraws as first close partners are admitted.

Subscription agreements and any investor side letters do not need CBI filing or approval.

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