

Key Features of Investment Limited Partnerships in Ireland

Introduction

The purpose of this briefing note is to provide an overview of the key features of Irish investment limited partnerships (“**ILPs**”). We have also produced a brochure which provides a more detailed overview of ILPs and the key steps in establishing an ILP in Ireland (available [here](#)).

In summary, the Irish regime for partnerships was re-designed in early 2021 to ensure that the ILP offered the features expected by managers employing private equity, venture capital and real asset strategies. The main features¹ are set out below.

Regulated AIF

The ILP is a regulated alternative investment fund (“**AIF**”), authorised by the Central Bank of Ireland (the “**Central Bank**”).

Tax Status

An ILP is transparent for Irish tax purposes. This is specifically provided for in Irish tax legislation. All income, gains or losses of an ILP are treated as arising, or, as the case may be, accruing, to each limited partner (“**LP**”) for Irish tax purposes (in accordance with the apportionment of such income, gains and losses under the terms of the limited partnership agreement (“**LPA**”)) as if such income, gains or losses had arisen, or, as the case may be, accrued, to the LPs without passing through the hands of the ILP.

No Irish stamp duty applies to the transfer, exchange or redemption of units in ILPs.

An exemption from Irish value added tax applies to management and administration services supplied to an ILP.

Closed-Ended

Generally speaking, ILPs will be closed-ended given the nature of their assets. However, it is possible to establish an ILP as being open-ended or open-ended with limited liquidity.

Limited Rules on Investments and Leverage

Save for certain specific situations (eg, loan origination), the Central Bank does not impose investment or leverage restrictions. In particular, there is no requirement for an ILP to operate on the principle of risk spreading (single asset ILPs are permitted).

¹ While it is possible to establish an ILP as a retail AIF, the vast majority of ILPs will be qualifying investor alternative investment funds and so this briefing note only addresses those.

Umbrella Structure

One of the unique features of an ILP compared to other jurisdictions is its ability to be structured as an umbrella fund with separate sub-funds, with segregated liability between those sub-funds. It is possible to provide for different investment strategies or LPs within each of the sub-funds. Another advantage of using the umbrella structure is that it allows for economies of scale in that it removes the need to establish separate ILP standalone structures each with a general partner (“GP”) and the various other service providers being appointed. In addition, it will be a lot quicker to establish a new sub-fund on an umbrella than having to set up a new standalone ILP.

Additional Structural Features

Typical structural features such as feeder vehicles, parallel vehicles, co-investment vehicles, holding companies and subsidiaries are all possible.

Location and Form of the GP

The GP is typically a corporate entity domiciled in Ireland, but it could be a partnership and could be domiciled outside of Ireland.

Role of the GP

The ILP has no separate legal personality and GP is charged with and is responsible for the management, control and operation of the ILP. In particular, the GP is responsible for the appointment of the alternative investment fund manager (“AIFM”), which will undertake the portfolio and risk management of the ILP (albeit it can delegate some of those functions).

Regulatory Status of the GP

The GP does not require a separate authorisation from the Central Bank and is not subject to any minimum capital requirements. However, the directors of the GP (or, where the GP is a partnership, the directors of the general partner of that partnership) must satisfy the Central Bank that they are fit and proper, by completing a questionnaire which is reviewed by the Central Bank.

Number and Type of LPs

LPs can be corporates, natural persons or partnerships. There is no limit on the number of LPs that can participate in an ILP and no minimum number either (single investor ILPs are permitted).

Minimum Commitment

Save for exemptions available to the GP, the manager and its employees (eg, to facilitate carry), LPs must meet a minimum commitment requirement of €100,000.

Liability of LPs

In general, an LP’s liability will not exceed the amount of its capital contribution or commitment to the ILP unless the LP participates in the conduct of the business of an ILP. The ILP Act specifies certain activities (the “white list”) which will be deemed not to constitute participation by an LP in the business of an ILP.

LP Defaults

There is broad flexibility to include within an LPA provisions dealing with LP default, including reducing, eliminating or forfeiting of partnership interests, subordinating interests of the defaulting LP to the interests non-defaulting LP and effecting a forced sale or forfeiture of the defaulting LP's interest.

Advisory Committee

It is possible to provide for advisory committees, with the exact composition being a matter for negotiation with LPs.

Capital Commitment

Typical capital commitment features are available, including multiple closings and the issue of interests at a fixed price.

Capital Accounting

The ILP can use capital accounting in order to facilitate differentiated participation by LPs in the ILP, for the return on particular assets to be allocated to particular capital accounts and for participation in the assets of the ILP otherwise than on a simple pro-rata basis.

The capital accounting methodology method used must be consistent with the requirements of the Alternative Investment Fund Managers Directive (“**AIFMD**”), which require the AIFM to establish, implement and maintain accounting policies and procedures to ensure that the calculation of the net asset value is carried out as required by the AIFMD and the Irish implementing regulations.

Excuse and Exclude Provisions

It is possible to provide for excuse provisions (which enable an LP to be excused from an investment that the ILP proposes to make) and / or exclude provisions (which permits the ILP to exclude an LP from a proposed investment that the ILP proposes to make). These are subject to some conditions, including that the provisions must be predetermined and documented.

Stage Investing

The GP, subject to the terms of the LPA, may permit LPs admitted after first close or a later closing in the fund cycle to only participate in and contribute capital to future investments.

Carried Interest

An ILP may establish management interests which permit portfolio managers of the ILP to participate in investments of the ILP. Such classes may participate in the ILP on the basis of conditions which differentiate the class from other classes in the ILP (for example, the allocation of a percentage of the value appreciation above the preferred return of the ILP). The precise mechanics of the waterfall and any clawback provisions must be disclosed to LPs. It is possible to establish carry vehicles in suitable jurisdictions, depending on the requirements of the carry recipients.

Amendments to the LPA

The ILP Act allows for LPA amendments to proceed without the approval of the LPs where the depositary certifies that the changes do not prejudice the interests of LPs. In other cases, it is possible to amend the LPA with the approval of the majority of the LPs, noting that the ILP Act allows for the LPA itself to make specific provision as to what constitutes a “majority of LPs” (eg, a majority by value, by number or by class). It is also possible for the LPA to specify a higher standard (eg, approval by 85% of LPs).

Side Letters

The LPA may provide for the use of side letters in order to agree specific terms between the GP and an LP. These side letters are not reviewed by the Central Bank but there are certain requirements which will apply under the AIFMD. In particular, no LP can obtain preferential treatment unless such treatment is provided for in the LPA or the offering document. It is worth noting that only the types of preferential treatment which may be agreed with LPs need to be disclosed. Furthermore, any preferential treatment must not result in an overall material disadvantage to other LPs. LPs must be treated fairly at all times but there is no requirement to treat them equally.

Marketing

Where an ILP is managed by an EU AIFM, it can be marketed throughout the EU to “professional investors” within the meaning of MiFID II using the AIFMD marketing passport. Local requirements in the relevant member states may also permit the EU AIFM to market to other categories of investors in those member states.

Where an ILP is managed by a non-EU AIFM or a registered AIFM, there is no AIFM marketing passport available and it can only be marketed under national private placement rules, where applicable.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this briefing note.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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