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Enhancements to Ireland's
Investment Limited
Partnership Vehicle

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Introduction

The Irish Investment Limited Partnerships (Amendment) Bill 2020 (the “**Bill**”) recently completed all stages of the Irish legislative process and will be signed into law shortly. The Bill introduces significant updates to Ireland’s investment limited partnership (“**ILP**”) vehicle.

The Irish funds industry has continued to grow from strength to strength and asset levels in funds domiciled in Ireland have now passed the €3 trillion milestone, with over 7,800 Irish domiciled funds in existence, over 550 fund promoters having established funds in Ireland from over 50 countries and Irish funds being distributed in over 90 jurisdictions.

This growth has been achieved as a result of Ireland’s strong regulatory environment, service provider expertise and product range in a dynamic and ever evolving international funds industry.

The introduction of the Irish Collective Asset-management Vehicle, or ICAV, in 2015, was a very innovative and welcome development for the Irish fund structure range, and has proved massively popular and successful, becoming the “go-to” vehicle for asset managers establishing Irish funds.

Recognising the demand among fund managers to utilise a regulated partnership vehicle, a number of important enhancements have been made to the Irish ILP. These enhancements are aimed at ensuring that Ireland has a ‘best-in breed’ regulated partnership vehicle building on Ireland’s position as the domicile of choice for asset managers wishing to establish European investment funds.

What is an ILP?

An ILP is a partnership vehicle established pursuant to the Investment Limited Partnerships Act 1994 (the “**1994 Act**”), the legislation which is amended by the Bill, and provides a Central Bank of Ireland (“**Central Bank**”) regulated partnership structure for asset managers seeking to establish an Irish domiciled fund. The ILP is constituted pursuant to a limited partnership agreement between the general partner(s) and the limited partner investors in the ILP.

Limited partnerships have long been the preferred vehicle for private equity and venture capital asset managers and investors globally. Limited partnerships are also commonly used in other alternative investment strategies and “real economy” investing such as infrastructure, real estate and renewable energy.

While the previously mentioned ICAV can be, and has been, used for the establishment of private equity and venture capital funds, and can include many of the common features of such funds, the conventional structure recognised by managers of, and investors in, such funds is, in many cases, the limited partnership.

What changes are made as a result of the reforms?

Umbrella Limited Partnerships

It is now possible to establish ILPs as umbrella funds with multiple sub-funds and segregated liability between those sub-funds. Previously, ILPs could not be established as umbrella funds. The ability to establish an umbrella structure, which is already permitted for the other Irish fund vehicles, allows managers to establish multiple sub-funds within the same ILP, allowing for separate investors, separate pools of assets and differing investment strategies without the need for multiple ILPs.

The Bill contains specific legislative provisions which in effect ring-fence the assets and liabilities of each sub-fund, explicitly enshrining the principle of segregated liability of sub-funds of ILP umbrella funds into law. In addition, the Bill implies limited recourse language into every contract, agreement or transaction entered into on behalf of an ILP sub-fund. This, therefore, will mean that an umbrella ILP cannot apply assets of one sub-fund against the liabilities of another sub-fund and liabilities attributable to a sub-fund must be discharged exclusively out of the assets of that sub-fund.

Limited Partnership Agreement Amendments

The Bill introduces changes to the manner in which ILP agreements, the constitutional document of the ILP to which all partners are a party, may be amended. These changes assist in streamlining the manner in which changes may be made.

Previously, an ILP agreement could not be amended without the approval of every partner of the ILP. The Bill allows amendments without unanimous partner approval. Where the ILP agreement so provides, the agreement may be amended by the approval of a majority of the partners if every partner to the ILP agreement has been given notice of the proposed amendment.

In addition, the ILP agreement may be amended without the approval of the limited partners being required where, as permitted by the ILP agreement, the depositary of the ILP has certified that such amendment does not prejudice the interests of the limited partners and it can be confirmed that such amendment is not in respect of a matter which the Central Bank has specified as requiring partner approval.

These changes provide flexibility in amending the ILP agreement and particularly where amendments are to benefit the partners or to incorporate regulatory changes without the administrative burden of seeking the approval of all partners.

The Bill also permits the ILP agreement to determine what constitutes a “majority of the limited partners” for the purposes of partner approvals (as is the case in other jurisdictions) and clarifies what should be determined as the majority where the ILP agreement is silent on this (ie, a simple majority calculated by reference to the value of contributions of the limited partners at the time the decision is to be made).

Safe Harbours for Limited Partners

Pursuant to the 1994 Act, a limited partner may not take part in the conduct of the business of the ILP and the consequences of a limited partner so taking part are that the limited partner will be liable in the event of the insolvency of the ILP for the debts of the ILP incurred during the period that they participated in the conduct of the business.

The Bill sets out a ‘white list’ of activities in which a limited partner can engage without being deemed to be taking part in the conduct of the business of the ILP. This is a welcome clarification for ILPs in terms of the scope of limited partner activities which can be undertaken without risk of losing the benefit of limited liability. This white list includes sitting on ILP committees (such as advisory committees), appointing or electing representatives to such committees and approving changes to the ILP agreement.

Return of Capital

The Bill simplifies the procedures in respect of the return of capital to the limited partners and a certification from the general partner will no longer be required. The changes align the process with those which already apply to other Irish fund vehicles.

Redomiciliation

The Bill permits the redomiciliation of partnerships from other jurisdictions (such jurisdictions to be specified by ministerial order) and sets out a streamlined process for such redomiciliation. This mirrors a process which already exists for funds established as investment companies and other types of corporate fund vehicles under existing legislation. The ability to redomicile funds from offshore jurisdictions was introduced in Irish legislation given the increasing preference among investors for regulated onshore jurisdictions. A redomiciled partnership will be authorised by the Central Bank as an ILP by way of continuation and may continue to use its track record and the legislation provides that redomiciliation will not operate so as to impact on any agreement entered into by the partnership prior to redomiciliation.

Beneficial Ownership Requirements

The Bill also introduces provisions in respect of the beneficial ownership of ILPs. General partners of ILPs will be required to maintain a register of beneficial ownership of the ILP and this register will need to be submitted to the Central Bank for inclusion on the Central Bank’s central register of beneficial ownership. A “beneficial owner” in relation to an ILP means any natural person who is entitled to or controls, directly or indirectly, more than a 25% of the capital or profits or voting rights of the ILP or otherwise controls the ILP. This change brings the ILP in line with the beneficial ownership requirements for Irish corporate fund vehicles as well as unit trusts and the Bill also introduces similar requirements for the common contractual fund structure.

ICAV Updates

The Bill is also being used as an opportunity to make a number of technical amendments to the ICAV legislation. These changes are primarily to align the ICAV legislation with certain provisions of the Companies Act 2014 and to introduce some further efficiencies in the operation of the ICAV.

Central Bank Consultation and AIFMD Q&A

Complementing the ILP changes above, on 23 November 2020, the Central Bank issued a **consultation paper** in respect of regulatory guidance on share class features of closed-ended funds. This guidance sets out proposed permissible features for qualifying investor alternative investment funds (“**QIAIFs**”) which are closed-ended and have strategies relating to private equity, venture capital and real estate. This consultation proposes to permit such funds to issue share classes which provide for excuse and exclude provisions, the issuance of shares at other than net asset value and stage investing. It also proposes permitting management share classes to be created which participate in the fund and receive returns which are greater than, but subordinate to, the returns to which other share classes are entitled.

In addition, on 23 November 2020, the Central Bank updated its **AIFMD Q&A** document to provide that the general partner of an ILP will no longer need to be authorised by the Central Bank as an AIF management company, as was previously the case. This is a welcome change and means that such general partners will not be subject to the minimum capital requirements which apply to AIF management companies. The directors of such general partner will be subject to the Central Bank fitness and probity process.

Comment

The introduction of these reforms to the ILP is a welcome and significant development for the Irish funds industry and reflects an industry which is constantly seeking to develop and grow, building on the positive experiences of the many promoters who have already established funds in Ireland. The enhanced and rebooted ILP will further strengthen Ireland’s fund product range, providing an attractive vehicle for promoters seeking to establish private equity, venture capital and “real economy” investment funds in Europe.

Please get in touch with your usual Asset Management and Investment Funds 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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