Ireland ILP

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Flexibility bodes well for ILP uptake

Interview with Peter Stapleton & Aaron Mulcahy

In a hunt for yield, investors have been enticed to consider allocating to illiquid asset classes in long-term, closed-ended products. Limited partnerships have been and continue to be the structure of choice for such investments, particularly for private equity (PE) and venture capital (VC).

Against this backdrop, the Irish Government has worked to modernise and enhance the existing Irish investment limited partnership (ILP) legislation with the view to making Ireland a global location for private equity funds*. As discussed by Peter Stapleton, head of the Irish Funds & Investment Management team at Maples and Calder, the Maples Group's law firm and his fellow partner Aaron Mulcahy, the outcome of this exercise is a modern, efficient, regulated yet flexible partnership vehicle.

A regulated partnership

The ILP is a common law tax transparent partnership that is regulated by the Central Bank of Ireland (CBI). As a regulated structure, the ILP can be set up as a qualifying investor AIF (QIAIF), which is designed for sophisticated investors who commit at least EUR100,000 (or the currency equivalent).

"ILP QIAIFs are very flexible and can be structured to suit all major investment strategies and can avail of a full suite of liquidity options making it suitable for PE, VC, sustainable finance, real estate and infrastructure," explains Mulcahy. "ILP QIAIFs are also not subject to legal risk spreading obligations making it suitable for concentrated portfolios."

Mulcahy highlights one of the key selling points of the ILP QIAIF is its speed to market. "Provided that all service providers (alternative investment fund manager (AIFM), investment manager, depositary, administrator) are approved by the Central Bank in advance, the ILP can avail of the CBI's 24-hour authorisation process", Mulcahy explains. "A further key selling point is the pan European marketing passport that can be availed of where the ILP has an EU AIFM."

Stapleton adds: "The modern and efficient ILP seems to sit in a space which offers a good balance between regulation and flexibility and will be a very attractive option for investors who have a preference for or require a regulated fund".

Enhancements

The updated ILP legislation came into effect on 1 February 2021 and introduced a series of best practice features designed to make ILPs run in a more efficient and certain manner. These include limited partner (LP) focused enhancements such as provision for LP participation on LP investment committees.

Mulcahy describes one noteworthy element in the new ILP legislation as "the ability for managers to choose an official name in a different script and register that alternative name with the CBI". Stapleton adds: "This is a good example of something which can seem like a relatively minor enhancement but is actually very helpful. Fund managers aim to make their products available to as wide an investor base as possible. So, when marketing funds overseas, being able to brand an ILP in the local language is very beneficial. It avoids any disconnect between the official and translated name and also works well from a branding perspective." This is expected to be an attractive feature for managers looking to tap into large pools of sovereign and institutional wealth in Asia and the Middle East.

Sustainability outlook

The enhanced ILP comes at opportune time when sustainable finance and ESG is the dominant theme in the European investment industry. Stapleton comments: "Its flexibility and speed to market position the ILP to play a significant role in raising private capital to meet sustainable investment targets set by the European Commission." He adds: "sustainable finance is currently one of the fastest growing asset classes in the market. Managers have already taken full advantage of the flexibility provided by QIAIFs to invest in a wide range of sustainable asset classes and this trend is likely to gain more traction with the recent enhancement of the ILP".

Broad suite of services

When it comes to taking this enhanced product to clients, the Maples Group is in the fortunate position of having worked with nine of the world's top ten PE managers for decades. "We have built up a lot of trust in dealing with these partners. Therefore, when we discuss a new investment product or opportunity with them, there is a level of experience and expertise within that relationship which means they trust us when we tell them this is something which will really work for them," Stapleton notes. He adds that the firm is an innovative legal adviser in that it is pro-active in bringing new developments to clients and also offers a broad suite of services. Stapleton continues: "In additional to legal, regulatory and tax advice, colleagues across the Maples Group can provide a wider range of services including management company services to ILPs and or providing GP and AIFM solutions, specialist fund administration and registered office, board support and fiduciary services to GPs".

Challenges and opportunities ahead

Mulcahy underlines that "there will always be challenges with any new or revamped product". That being said he is very confident about the upgraded ILP, noting "the Irish Government worked in collaboration with the Irish funds industry and the CBI to enhance the ILP and the result of this collaboration is a modern, efficient, regulated yet flexible partnership vehicle." He also added, "in parallel with legislative enhancements, the CBI has published helpful guidance clarifying the ability of closed-ended QIAIFs to facilitate key features of PE funds, such as excuse and exclude, stage investing and management participation through carry". "The legislative enhancements together with the helpful product guidance should lessen the challenges facing the ILP", he noted.

Outlining the future uptake of the ILP, Stapleton believes one of the crucial drivers is the thirst managers have to offer innovative products to their clients: "GPs want to meet their investors' demands and are constantly screening a variety of domiciles to understand the products available. They then try to match the best they find with their investor requests and needs.

"When building products, managers aim to position their fund to be as attractive as possible. In view of this, features like the potential for local branding, the flexibility around asset classes and further clarity around limited liability of LPs offered by the ILP, help support those efforts." ■

**Ireland for Finance: The Strategy for the development of Ireland's international financial services sector to 2025.*

Peter Stapleton
Head of Investment Funds, Maples and Calder

Peter heads Maples and Calder's Funds & Investment Management team at the Maples Group's Dublin office. He regularly advises investors, sponsors, fund managers and investment banks on the establishment, structuring, financing, public and private distribution and ongoing operation of UCITS and AIFs, including hedge funds, funds of funds, master feeders, private equity funds, managed account platforms and bespoke structures. Peter also has significant expertise advising on derivatives, prime brokerage, investment services, MiFID and securities law. His clients include financial institutions carrying out business in Ireland, or transacting with Irish-domiciled counterparties from other jurisdictions. Peter holds several senior positions on industry groups and regularly works with Irish regulatory and governmental bodies on enhancing Ireland's financial services regime. He is a recognised legal expert in the ESG and sustainable investment space and works with some of the world's largest managers and financial institutions to implement their internal policies as well as external standards such as UN PRI and the EU's Sustainable Action Plan.

Aaron Mulcahy
Partner, Funds & Investment Management, Maples and Calder

Aaron is a partner of Maples and Calder's Funds & Investment Management team in the Maples Group's Dublin office. He advises on a wide variety of legal and regulatory issues facing Irish domiciled collective investment schemes (CIS), and has particular expertise in the establishment, operation and regulation of all types of Irish CIS, including UCITS and AIFs. He currently sits on industry association committees dealing with money market fund and limited partnership reform. He also advises a wide variety of fund service providers, including AIFMs, delegates of AIFMs, administrators, custodians / depositaries and prime brokers.