Investment limited partnerships in Ireland: the new way forward

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The Investment Limited Partnership (Amendment) Act, 2020 (the 2020 Act) brought about much-welcomed updates to the Irish investment limited partnership (ILP) regime, ensuring that the ILP is a modern and efficient partnership vehicle.

The 2020 Act modernises the ILP and aligns it more closely with the well-established limited partnership structures used in other international fund domiciles such as the:

- Cayman Islands exempted limited partnership;
- Delaware limited partnership; and
- Luxembourg special limited partnership.

The Group's funds and investment management team advised on the first 'ILP 2.0' to receive authorisation from the Central Bank of Ireland (the Central Bank) and are confident its speed to market, its ability to access European investors using the AIFMD marketing 'passport' and the flexibility it offers in terms of covering the full suite of asset, strategy and liquidity options make it a compelling choice for a regulated partnership vehicle. As a result, we fully expect it will become more prominent in the fund financing space (subscription line and net asset value financing) in the future.

What is an ILP?

An ILP is a regulated, tax-transparent common law partnership structure. It is Ireland's flagship partnership vehicle for use as an investment fund and typically selected by managers availing of closed-ended strategies in real estate, private equity, credit, infrastructure, sustainable finance and related asset classes.

Similar to partnership fund structures in other fund domiciles, an ILP is constituted pursuant to a limited partnership agreement (the LPA) entered into by: (i) one or more general partner(s) (each a GP), who manage the business of the partnership; and (ii) any number of limited partners (each an LP), and is subject to authorisation by the Central Bank.

An ILP, unlike a corporate entity, has no separate legal personality acting through its GP, which is liable for the debts and obligations of the ILP with the liability of an LP limited to the value of its capital contributed or committed. The ILP can be authorised as a qualifying investor AIF (QIAIF) or retail investor AIF although the QIAIF has historically proven to be the more popular option with managers.

Reforms under the 2020 Act

The 2020 Act introduced a number of important reforms to the ILP structure, which increase the attractiveness of ILPs in Ireland to international managers, investors and lenders. Some of the main changes include:

- Umbrella Partnerships – ILPs can now be established as umbrella funds (as distinct to stand-alone funds), with segregated liability between sub-funds accommodating different investor types or strategies albeit under the same umbrella.

- Migration – the ability to migrate partnerships into and out of Ireland on a statutory basis.

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- Amending the LPA by majority – the removal of the requirement for all partners to consent in writing to an amendment of the LPA, and only requiring a majority of partners.
- Safe Harbour Provisions for an LP – The ability of LPs to undertake certain actions without being deemed to be involved in the management of the partnership without losing their limited liability status.
- Majority of LPs – provision for the concept of a 'majority of limited partners' to align with partnership structures in competing fund jurisdictions.
- GPs – express confirmation of the ability to transfer a GP interest and provision for the liability of incoming and outgoing GPs.
- Withdrawal of capital – more flexibility on withdrawal of capital.
- Naming – managers can select a second official name in another script and register that name with the Central Bank, making branding and marketing easier overseas.

Benefits of an ILP compared to other Irish fund vehicles

The Irish collective asset management vehicle (ICAV) has been the vehicle of choice for private equity managers operating in Ireland due to the nature of the ICAVs structuring flexibility to accommodate many private equity strategies and private equity-centric features (such as capital commitment/drawdown mechanisms, distribution waterfalls, carried interest and 'excuse and exclude' allocation of assets).

Notwithstanding the success of the ICAV, global asset managers have generally preferred the limited partnership structure for private equity funds, so we expect the ILP to prove as popular as the ICAV as a flagship regulated Irish vehicle for private equity managers. International investors' familiarity with limited partnership structures in other leading jurisdictions and the similarities between these structures are likely to be a major draw of the ILP.

Fund financing and security

There are no restrictions on the use of financing by an ILP with a full security package available to lenders over all assets, including contractual call rights in any master/feeder structure. There is full flexibility for an ILP to utilise subscription financing, margin lending, net asset value financing and other types of facilities including total return swaps and other derivative arrangements.

Given the fact that the Irish ILP is now more in line with the limited partnership structures in other fund jurisdictions this lends itself to international lenders considering lending to an ILP as they will be much more familiar with the partnership structure and the security package available.

While Irish regulated funds such as the ILP are subject to a regulatory restriction on acting as a guarantor for third parties (other than wholly owned subsidiaries), alternative security options are available in order to allow lenders access to the ILP's capital call rights in circumstances where the ILP is not the borrower, including the 'cascading security' which we frequently see on fund financings involving Irish funds.

Looking forward

Given the improvements made, we expect the number of new ILPs will continue to increase, and we anticipate that ILPs will have a proportionally bigger impact and create much more downstream work for a range of legal and other professionals across the corporate, tax and finance sectors.

Ireland, being one of the major players in the creation and management of investment funds worldwide, is well-positioned to take advantage of the 2020 Act. We expect to see ILPs play an increasingly important role in attracting revenue, jobs and deal flow to Ireland over competing jurisdictions and featuring more regularly in international fund finance transactions. ■

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