



January 2021

Ireland's Investment Partnership Act signed into law

The Investment Limited Partnership (Amendment) Act, 2020 (the “**2020 Act**”) was signed into law by the President of Ireland on 23 December, 2020. The purpose of the 2020 Act is to amend The Investment Limited Partnerships Act, 1994, which governs the establishment and operation of regulated investment limited partnerships (“**ILP**”) in Ireland.

The 2020 Act looks to modernise the law governing investment limited partnerships so as to make the ILP the vehicle of choice for implementing private equity, venture capital, private debt and real assets investment strategies in Europe. As well as modernising the ILP in line with other types of Irish investment fund vehicles, the amendments to the existing ILP regime are intended to incorporate “best in class” features for this type of vehicle.

In this briefing we outline some of the key features of the ILP.

Summary of some of the key features

Formation of ILPs

The establishment of ILPs is subject to the approval of the Central Bank of Ireland (the “**Central Bank**”) and ILPs are regulated by the Central Bank in accordance with the provisions of the Central Bank's AIF Rulebook. An ILP can only be considered established when a certificate of authorisation has been issued by the Central Bank in accordance with the requirements of ILP Act.

Regulation of ILPs as alternative investment funds

All ILPs are required by be authorised and regulated by the Central Bank. ILPs are regulated in accordance with the requirements of the

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Central Bank's AIF Rulebook and are categorised as either Retail Alternative Investment Funds ("RIAIFs") or Qualifying Investor Alternative Investment Funds ("QIAIFs"). For RIAIF ILPs, the main offering documents are required to be submitted to the Central Bank for prior review and comment. However QIAIF ILPs can avail of a fast-track procedure under which the constitutional documents, main offering documents and material contracts are simply filed the day before approval is required. RIAIFs and QIAIFs are capable of being open-ended, limited liquidity or closed-ended in terms their liquidity profile.

Ability to establish umbrella type ILPs

The 2020 Act permits umbrella type ILPs to be formed with multiple segregated liability compartments or "sub-funds". This provides asset managers with significant structuring flexibility and allows different strategies and investor types to be accommodated within one overall architecture while at the same time preserving segregation of liability (i.e. the assets of one sub-fund are not available to discharge the liabilities of other sub-funds within the same umbrella). The umbrella structure concept is well established and recognised. Umbrella structures are regularly used by asset managers. However, the ability to use an umbrella structure in an ILP is a unique feature which will provide considerable operational efficiencies and potential economies of scale.

Limited liability of limited partners

Under the 2020 Act, the liability of limited partners is limited to the amount they contribute or agree to contribute to the ILP unless they perform certain activities related to the management and operation of the ILP.

Limited Partners performing certain functions

Typically, if an LP takes part in the management of the limited partnership structure, the LP runs the risk of losing limited liability in relation to any losses which arise as a result of such activities. The 2020 Act provides a non-exhaustive list of activities which an LP can perform in relation to the ILP which will not be considered to be participating in the management of the ILP and consequently will not compromise its limited liability status. The provisions of the 2020 Act relating to LP participation in these activities are in line with accepted industry standard i.e. service on any board or committee of the ILP; investigating, reviewing, or being advised as to the accounts or business affairs of the ILP or exercising any right conferred by the Bill; or approving changes to the limited partnership agreement ("LPA").

Amendments to the LPA

In order to provide greater flexibility and simplify the process of amending the LPA of an ILP, the amendments to the legislation removes the requirement for **all** LPs to approve an amendment to the LPA and amendments will now be permitted by a majority of the general partners ("GPs") and a majority of LPs. In order to be consistent with other available fund structures in Ireland, the 2020 Act also allows for certain amendments to proceed without LP approval where the depositary of the ILP certifies that the changes to the LPA do not prejudice the interests of LPs. In keeping with what is allowed for similar structures in other jurisdictions, the 2020 Act allows for the LPA to set down the

specific provisions with respect to what a “majority of limited partners” is considered to mean. Accordingly, asset managers have flexibility in determining the appropriate methodology to use.

Partner defaults and failure to perform

Critical to the operation of an ILP are the provisions of the LPA which address the issues relating to failures by LPs to perform their obligations under the LPA. The range of options available to the GP in the event of a default by an LP in respect of its obligations will be set out in the LPA. The 2020 Act specifically allows for the following consequences for an LP who fails to perform the obligations applicable to it under the LPA:

- (a) reducing, eliminating or forfeiting of partnership interests;
- (b) subordinating the partnership interest in the ILP of the defaulting partner to the interests of non-defaulting partners;
- (c) effecting a sale or forfeiture of the defaulting partner’s partnership interest.

The 2020 Act makes it clear that provisions in the LPA relating to the consequences for defaulting investors will not be unenforceable solely on the basis that they may be penal in nature.

Return of contributions

LPs are permitted under the 2020 Act to receive out of the capital of the ILP a payment representing the return of any part of their contribution to the ILP subject to the requirements of the LPA. In order to ensure that such payments are capable of being recalled if necessary, the LPA will have provisions addressing the issue of repayment of distributions by limited partners in specific circumstances.

Migration of limited partnerships from other jurisdictions

It is possible for limited partnerships established in other jurisdictions to migrate to Ireland. The application for migration by a migrating partnership is made to the Central Bank and follows much of the standard process for establishment and authorisation of an ILP.

Beneficial Ownership Requirements – ILPs and Common Contractual Funds

The 2020 Act requires the GP of an ILP to establish and maintain a register of beneficial ownership of the ILP and to submit that information to the Central Bank for inclusion on the Central Bank’s central register of beneficial ownership of certain financial vehicles.

A “beneficial owner” in relation to an ILP means: any individual who (a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership, or (b) otherwise controls the partnership.

Regulation of GPs to ILPs

In November, 2020, the Central Bank issued a revised version of its [Q&A on AIFMD](#) in which it confirmed that the GP of an Irish ILP will not need a separate regulatory authorisation. However, as expected, it has also confirmed that the Directors of the GP of an Irish ILP will be required to comply with its fitness and probity regime.

Central Bank Consultation on amendments to the AIF Rulebook

In addition to the publication of the revised [Q&A on AIFMD](#), as we detailed in a previous [briefing](#), the Central Bank also issued a [consultation paper](#) (“**Consultation Paper**”) on regulatory guidance which, subject to stakeholder feedback, it proposes to issue relating to the scope of permissible features for share classes of closed-ended QIAIFs which pursue private equity type strategies or invest in other illiquid assets (“**CE QIAIF**”). The Consultation addresses the areas of:

- (i) the issue of interests at a price other than NAV;
- (ii) Excuse and exclude provisions;
- (iii) Stage investing; and
- (iv) Management participation in specific share classes (i.e. carried interest / waterfall mechanisms).

The consultation period closed on 22 December, 2020. The outcome of CP132 will be of particular relevance in the context of its implications for ILPs which are expected to be the preferred vehicle of choice for private market asset managers when establishing structures in Ireland and which will be predominantly closed-ended in nature.

Conclusion

If you have any questions in relation to the new ILP framework, please contact your usual contact or any other member of the Dillon Eustace’s Asset Management and Investment Funds team.

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January 2021

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