



## November 2020

### Irish investment limited partnerships and closed-ended funds update

As readers will be aware, a [Bill](#) to amend The Investment Limited Partnerships Act, 1994, which governs the establishment and operation of regulated investment limited partnerships in Ireland (“**partnerships**”), was published in September 2020, and is currently at an advanced stage in the Irish Parliament. The Bill is intended to enhance the structural features of partnerships available under the current legislation so that they are better able to compete with partnership structures in competing jurisdictions and to make technical amendments reflecting legal developments since the legislation’s original enactment.

The regulatory regime for closed-ended Irish funds is being adapted primarily to reflect these legislative changes. The Central Bank of Ireland has issued a revised version of its [Q&A on AIFMD](#) in which it confirms that the general partner of a partnership will not require a separate regulatory authorisation. As expected, it has confirmed that the directors of a general partner will be deemed to be performing Pre-Approval Controlled Functions within the meaning of Ireland’s financial sector’s fitness and probity rules and will be required to comply with the Central Bank’s guidelines in that regard.

The Central Bank has also issued a [consultation paper](#) (“**consultation paper**”) on the features of classes of interests / share classes of closed-ended Qualifying Investor funds.

We consider both of these developments below.

#### Regulatory status of the general partner

Under the existing partnership regime, the Central Bank required general partners to obtain a specific regulatory license from the Central Bank. The Central Bank’s revised Q&A on AIFMD confirms that this

For further information on any of the issues discussed in this article please contact:



**Donnacha O'Connor**  
DD:+ 353 (0)1 673 1729  
[donnacha.oconnor@dilloneustace.ie](mailto:donnacha.oconnor@dilloneustace.ie)



**Derbhil O'Riordan**  
DD:+ 353 (0)1 673 1755  
[derbhil.oriordan@dilloneustace.ie](mailto:derbhil.oriordan@dilloneustace.ie)



**Shane Geraghty**  
DD:+ 353 (0)1 673 1851  
[shane.geraghty@dilloneustace.ie](mailto:shane.geraghty@dilloneustace.ie)

requirement will be discontinued. This assumes that the only role discharged by the general partner in respect of the partnership is to act as general partner and that a separate AIFM (either EU or non-EU) is appointed by it.

While the general partner and its directors will be required to comply with Ireland's fitness and probity regime for the financial sector, including the guidelines of the Central Bank in this area (the "**F&P regime**"), the general partner will not be required to obtain a regulatory authorisation from the Central Bank. Under the F&P regime, all directors of the general partner must be approved in advance by the Central Bank. The Central Bank looks to ensure that persons in senior positions in firms are "*competent and capable, honest, ethical and of integrity and also financially sound*"<sup>1</sup>. The process of obtaining Central Bank approval for each director is a standardized one that applies equally to all other types of Irish funds and fund management companies and will be expected to run in tandem with the establishment of the partnership. The general partner itself must ensure that its directors and partners comply with the F&P regime on an ongoing basis. The Central Bank will have certain powers over the general partner and its directors in respect of that regime.

### Consultation Paper

The consultation paper signals the Central Bank's intention to clarify, and in some cases adapt, its existing rules on the permissible features classes of interests / share class to reflect the typical features of closed-ended funds. These features will be available to closed-ended Qualifying Investor fund partnerships as well as all other available legal structures.

#### *Issue of interests/shares at a price other than net asset value*

The consultation paper envisages that interests/shares may be issued at a fixed price throughout a fund's life. As readers will be aware, the current Central Bank regime requires interests/shares to be issued at their net asset value (calculated by the Administrator) once the relevant fund's "initial offer period" has ended with the exception of shares/interests that are being issued for the first time. The "initial offer period" is the period from the launch/initial close of the fund up to the end of a period not in excess of 2.5 years, in the case of real estate, venture capital, private equity or loan origination funds, or 6 months in the case of all other Qualifying Investor funds. The current position can cause difficulty for closed-ended structures where net asset values may be calculated infrequently and where additional shares or interests are allocated each time there is a capital draw-down. While the current requirements can be addressed in a number of ways, including through the issue of series of shares/interests at a fixed price at each draw-down date, this new rule will improve matters significantly.

#### *Excuse and exclude provisions*

The consultation paper indicates that the Central Bank intends that closed-ended Qualifying Investor funds will be permitted to implement "excuse and exclude provisions" to allow individual investors to be excused from participating in specific investments or types of investments, subject to the investor outlining the basis on which the excuse or exclude provision is being invoked in a legal opinion that is accepted by the AIFM and fund board/general partner. This represents a change from the Central

---

<sup>1</sup> <https://www.centralbank.ie/regulation/how-we-regulate/fitness-probity>

Bank's current position which generally requires all investors to participate pro-rata in all of the relevant fund's assets.

### *Stage Investing*

The consultation paper also sets down the Central Bank's proposal to allow classes of shares/interests to be issued which would involve the holders participating in existing and future investments of the fund or in future investments only. This is a departure from the current position which generally requires all shares/interests to participate pro-rata in all of the assets of the relevant fund, irrespective of when the shares were issued or the assets acquired.

### *Management / Carried Interest Classes*

The consultation paper also provides for the creation by closed-ended Qualifying Investor funds of carried interest or management classes. The Central Bank envisages imposing two principal conditions on such classes of interests/shares, firstly, that the terms of such classes are set out in the fund's offering document and secondly that, in respect of carried interest classes, that capital payments (both return of contributed capital as well as preferred return) are allocated to investor classes in priority to the carried classes. It is anticipated that this will broadly facilitate carried interest mechanisms, including "catch-up" mechanisms, however further clarification will be sought on this during the consultation period.

## **Conclusion**

If you would like to contribute to Dillon Eustace's response to the consultation paper, or if you have any questions in relation to the proposed new partnership legislation and regulation, please contact your usual contact or any other member of the Dillon Eustace's Asset Management and Investment Funds team.

**Dillon Eustace**  
**November 2020**

DILLON  EUSTACE

#### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

#### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

#### **New York**

Tower 49, 12 East 49<sup>th</sup> Street, New York, NY10017, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

#### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

#### **DISCLAIMER**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

#### **Copyright Notice:**

© 2020 Dillon Eustace. All rights reserved.