DILLON EUSTACE

Limited liability of limited partners in Investment Limited Partnerships

INTRODUCTION

The Irish investment limited partnership (the "**ILP**"), now re-shaped as a flexible fund investment vehicle following amendments made to the existing Investment Limited Partnership Act, 1994 (the "**ILP Act**"), is expected to become the fund structure of choice for many international investment managers, particularly those in the private equity and real assets sectors.

In this key features document, we briefly discuss the limited liability nature of interests held by limited partners ("**LPs**") in the Irish ILP. A more detailed analysis of the ILP is available here.

KEY POINTS

- →Loss of limited liability possible if an LP participates in the management in the ILP;
- →LPs are permitted to engage in certain activities without loss of limitation on liability;
- →The partnership agreement of the ILP should specify the limited activities the LPs can undertake without suffering a loss of limited liability;
- →Participation in investor committees or similar by an LP will not result in a loss of limited liability.

Are there any circumstances in which LPs in an Irish ILP may lose their ability to rely on limited liability?

Similar to limited partnership structures in other jurisdictions, LPs are not generally permitted to participate in the management of an ILP and in particular do not have power to contract on behalf of the ILP. The ILP Act requires that all letters, contracts, deeds, instruments and other documents be entered into by the general partner (the "**GP**") on behalf of the ILP.

However, the Act provides that an LP may lose this limitation on liability where for example it takes part in the conduct of the business of the ILP in its dealings with third parties who are not partners of the ILP. In such circumstances, the LP will be liable in the event of the insolvency of the ILP for debts of the ILP incurred during the period in which the LP participated in the conduct of the business as though it was a GP.

How is the liability of an LP limited in an ILP?

The LPs in an ILP participate on a proportional basis in the income, gains and losses of the ILP arising from its investments. Under the ILP Act, the liability of LPs is generally limited to the amount they contribute or agree to contribute to the ILP.

What activities can a LP undertake in an ILP without losing its limited liability?

The ILP Act provides certainty as to what LPs can do without being considered to be involved in the conduct of the ILP's business. Actions which they can take without losing their limited liability status include:

(a) serving on any board or committee (such as an advisory committee) of the ILP, or established by, or as provided for in the LPA in respect of a GP, the LPs or the partners generally;

(b) appointing, electing or otherwise participating in the choice of a representative or any other person to serve on such board or committee;

(c) consulting with and advising a GP with respect to the business of the ILP;

(d) investigating, reviewing, or being advised as to the accounts or business affairs of the ILP or exercising any right conferred by the ILP Act;

(e) voting as an LP on specific matters set down in the Act which include for example:

(i) the dissolution and winding up of the ILP;

(ii) a change in the objectives or policies of the ILP;

(iii) the admission, removal or withdrawal of a GP or LP or depositary and the continuation of the business of the ILP thereafter;

(iv) a decision to approve an alteration in the LPA.

Notwithstanding the statutory provisions contained in the ILP Act, given the importance of limited liability to LPs, the relevant LPA should carefully specify the respective roles of the GP and the LPs. It should also identify which activities the LPs can undertake without losing the protection of limited liability in order to ensure that there is no inadvertent loss of limited liability by LPs.

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