



# The Use of Side Letters 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 highlight some considerations relevant to the use of side letter arrangements in Irish ILPs. A more detailed analysis of the ILP is available [here](#).

## KEY POINTS

- Broad flexibility to negotiate side letters with individual LPs;
- Information on any such side-letter arrangements must be included in the limited partnership agreement / offering memorandum;
- LPA can be amended after first close to address terms negotiated with subsequent LPs who invest after first close;
- The AIFM will be required to provide some information on side-letter arrangements in its periodic reporting to its competent authority.

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## How is the concept of fair treatment of investors addressed in an Irish ILP?

Under AIFMD rules which apply to EU authorised AIFMs, no limited partner (“**LP**”) in an ILP should be given preferential treatment unless such preferential treatment is disclosed in the ILP’s limited partnership agreement/offering memorandum. Any preferential treatment afforded to one or more LPs should not result in an overall material disadvantage to other LPs.

However, those rules do not preclude a general partner (“**GP**”) from negotiating specific terms with individual LPs by way of side letter, provided that the limited partnership agreement/offering document addresses this possibility.

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## What specific disclosure obligations arise where side letters are used to allow the GP to negotiate individualised terms with LPs?

The offering memorandum must inform all LPs that side letters may be put in place with individual LPs.

It should include a description of the type of preferential treatment which has or may be agreed with individual LPs. Such terms may include an entitlement to different disclosures/reporting to investors, different fee terms for the relevant LP, granting an LP a seat on any advisory committee, requiring the ILP to adhere to certain ESG policies or incorporating negotiated “exclude/excused” provisions allowing the LP to choose not to participate in certain investments in certain circumstances.

It is not necessary to identify the specific LPs with whom such tailored arrangements have been agreed. However, the offering memorandum should disclose the type of LPs who obtain such preferential treatment. Where relevant, any legal or economic ties with the AIFM or the ILP should also be disclosed.

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## What considerations should be borne in mind when drafting the limited partnership agreement (the “**LPA**”) to address side letter arrangements?

The LPA should address the ability of the GP to enter into side letters with individual LPs. However, it is also possible to amend the provisions of the LPA to address specific terms negotiated with subsequent LPs after first close should the need arise.

## Are there any other regulatory considerations to be borne in mind when considering side-letter arrangements?

AIFM must report certain information relating to the ILP to the AIFM's competent authority on a periodic basis (with frequency ranging from annual reporting to quarterly reporting depending on the assets under management of the AIFM and the particular features of the funds under its management).

As part of this periodic reporting, the AIFM must disclose whether there are any investors who obtain preferential treatment or the right to preferential treatment (e.g. through a side letter).

If so, the AIFM must indicate the type of preferential treatment afforded to such investors and in particular, whether this takes the form of different disclosure/reporting to investors, different fee terms for investors or other forms of preferential treatment.



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