MAPLES GROUP

THE IRISH INVESTMENT LIMITED PARTNERSHIP

A Guide for Asset Managers

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INVESTMENT LIMITED PARTNERSHIP

The Investment Limited Partnership ("ILP") is a regulated 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.

The ILP has been in existence since 1994 and a number of structures have been launched since then which the Maples Group has advised on. The Irish Government has made several enhancements to existing legislation to update it in line with features (i) introduced in other leading Irish structures (e.g. the ICAV); and (ii) offered in other leading common law partnership structures (e.g. Delaware LLPs, Cayman Islands ELPs and UK LPs).

The aim is to make the ILP a preferred vehicle for EU investment funds structured as partnerships, particularly as it will be able to avail of the Alternative Investment Fund Managers Directive ("AIFMD") marketing passport.

This Guide sets out key information on the ILP and highlights the changes brought about by amending legislation.

LEGAL OVERVIEW

The ILP is constituted pursuant to a limited partnership agreement in accordance with the Investment Limited Partnerships Acts 1994 and 2020 (the “ILP Act”), entered into by one or more general partner(s) (each a “GP”), who manage the business of the partnership on the one hand, and any number of limited partners (each a “LP”) on the other hand, and is subject to authorisation by the Central Bank of Ireland (the “Central Bank”).

Since the ILP has no legal personality, it acts through its GP, which is ultimately liable for the debts and obligations of the ILP to the extent that the ILP has insufficient assets. The GP must be a body corporate which is either (i) a stand alone unauthorised entity or entity authorised by the Central Bank to act as an alternative investment fund manager (“AIFM”); or (ii) availing of the right to manage an Irish alternative investment fund (“AIF”) on a cross-border basis under AIFMD.

There are no restrictions on the number of LPs that may be admitted to an ILP. The liability of a LP for the debts and obligations of the ILP is limited to the value of its capital contributed or committed, except where an LP is involved in the management of the ILP. The ILP legislation includes a non exhaustive “white-list” of activities that can be carried out by LPs without them being deemed involved in the management of the ILP.

All of the assets and liabilities of an ILP belong jointly to the partners in the proportions agreed in the partnership agreement. Similarly, the profits are directly owned by the partners, again in the proportions agreed in the partnership agreement.

INVESTMENT RESTRICTIONS AND LIQUIDITY OPTIONS

The ILP can be authorised as a Qualifying Investor AIF ("QIAIF") or Retail Investor AIF ("RIAIF").

The investment restrictions for AIFs are set according to the target investor type, with certain restrictions applicable to retail-oriented AIFs being disapplied in the context of marketing to more sophisticated qualifying investors.

Historically, managers have been most interested in the QIAIF category and this Guide focuses on options in this regard. Further information on ILPs structured as RIAIFs is available on request from members of the Funds & Investment Management team listed in the Contacts section of this Guide.

ILP QIAIFs may avail of a full suite of liquidity options so may be structured as open-ended, limited liquidity or closed-ended schemes, while redemption gates, deferred redemptions, holdbacks, in-kind redemptions and side-pockets can all be facilitated.

Importantly in the real asset investment space, ILP QIAIFs can avail of streamlined capital drawdown structures and provide for robust enforcement provisions in the case of defaulting LPs.

KEY FEATURES OF THE ILP

The following are the key features and current considerations when establishing a QIAIF ILP:

Legal and Regulatory Framework	Investment Limited Partnerships Acts 1994 and 2020 (as amended), AIFMD and the Central Bank's AIF Rulebook.
Investor Eligibility	Investors must meet "Qualifying Investor" criteria (i.e. sophisticated and HNWI only).
Minimum Initial Commitment	€100,000.
Subject to AIFMD	Yes.
Global Marketing	The ILP is an EEA AIF so it can avail of the AIFMD pan-EEA marketing passport where it has an EEA AIFM. It can also be registered for sale in many of the world's leading investor markets subject to compliance with local securities laws.
Maximum Number of Investors	None (unlimited).
Investor Liability	Limited liability for LPs, provided they do not take part in the management of the ILP. The ILP Act sets out a non-exhaustive "white list" of activity which can be performed by LPs without affecting their limited liability status.

Investment Restrictions and Risk-Spreading Rules	ILPs established as QIAIFs have no material investment restrictions and no borrowing or leverage limits (subject to making clear investor disclosure). They are not subject to statutory risk-spreading obligations, making them extremely useful for single asset funds and/or funds with very concentrated positions, whether as part of a ramp-up of a portfolio or a longer term strategy.
ESG Considerations	Owing to the flexibility on investment restrictions, borrowing and related features as well as the speed-to-market, the QIAIF ILP is likely to be among one of the more popular regulatory categories for ESG funds. AIFMs have already taken full advantage of the flexibility provided by QIAIFs to invest in sustainable asset classes as varied as land-based salmon farms, wind and solar power plants.
Leverage Opportunities	No restrictions on the use of financing by the ILP, its subsidiaries or its alternative investment vehicles with full security packages available to lenders over all assets, including contractual call rights in any master/feeder structure. Full flexibility for an ILP to utilise subscription financing, margin lending, NAV and other types of facilities including total return swaps and other derivative arrangements.
Tax Treatment	Tax-transparent for Irish tax purposes. The income and gains are treated as arising to each partner in proportion to the value of the ILP interests beneficially owned by them.
Required Service Providers	GP, AIFM (which can also be the GP), depositary, administrator, auditor and legal advisors.
Ability to Delegate to a Non-EEA Investment Manager	It is possible for an AIFM of an ILP to delegate portfolio management and/or risk management to a non-EEA investment manager in accordance with AIFMD.
Speed to Market	Provided that all service providers are approved by the Central Bank in advance, the ILP can avail of the Central Bank's enhanced 24-hour authorisation process.

KEY LEGISLATIVE ENHANCEMENTS

As noted above, the ILP Act has been updated to further enhance the attractiveness of ILPs for international investors. The main enhancements are summarised below:

Naming Convention	Inclusion of the ability to register an "alternative foreign name" in order to enable an ILP operating in a non-English speaking jurisdiction (e.g. China) to have official recognition of a translated name in that jurisdiction.
LPs	Revision of definition of "limited partners" to allow for the ability to divide LPs into sub-categories for regulatory reasons, fee treatment, rights and voting etc. Provision for the concept of a "majority of limited partners" to align with partnership structures in competing fund domiciles by providing flexibility so that an ILP can specify, for example, a majority by number, a majority by value, a majority by class or a majority that is higher than a simple majority. Expansion of the "white list" of activities which can be performed by LPs without affecting their limited liability status (e.g. involvement on LP committees etc.).
GPs	Provision for a statutory novation of assets and liabilities on substitution of a GP without further formality to simplify the administration of changes in GPs. Express confirmation of the ability to transfer a GP interest and provision for the liability of incoming and outgoing GPs.

Withdrawal of Capital	Relaxation of requirements on withdrawal of capital, including removal of the requirement for (i) the GP to certify that the ILP is able to pay its debts in full as they fall due after the proposed return of capital is made; and (ii) a LP to be liable for repayment of capital with interest for a period of four months from the date of return of capital where the GP certification is not secured.
Amendment of Limited Partnership Agreement ("LPA")	Removal of requirement for all partners to consent in writing to amendment of the LPA. Provision for amendment of the LPA where provided in the LPA (i) upon certification by the depositary that the proposed amendment does not (a) prejudice the interests of LPs; and (b) relate to any matter specified by the Central Bank as requiring approval by LPs; and (ii) where approved by a majority of partners.
Umbrella Partnerships	Ability to establish ILPs as umbrella funds, with segregated liability between sub-funds.
Migration of Partnerships	Ability to migrate partnerships into and out of Ireland on a statutory basis.

They have great strength in handling country registrations and all aspects of maintaining all regulatory filings...

Commercially minded, aware of new developments and very proactive...

They are outstanding on international aspects...

CHAMBERS EUROPE

Highly knowledgeable, proactive and, above all, pragmatic...

...regarded by some as being 'the best in Dublin'...

Exceptional technical knowledge...

LEGAL 500

Partners and associates are technically excellent and can be relied on for practical and sound business advice...

The team at Maples is outstanding...

Maples is one of the key law firms in Ireland. They're very commercial, responsive and solutions-orientated...

IFLR

The Maples Group is independently ranked first amongst Irish law firms in Ireland in terms of total number of funds advised (based on the latest Monterey Ireland Fund Report, as at 30 June 2020).

CENTRAL BANK ENHANCEMENTS

In parallel with the legislative enhancement of the ILP Act, the Central Bank has undertaken a review of the AIF Rulebook to ensure it remains appropriate for closed-ended strategies. This review resulted in publication of an update to its AIFMD Q&A and guidance on share class features of closed-ended QIAIFs ("Guidance").

The AIFMD Q&A clarifies that a GP who appoints an AIFM is not required to be separately authorised by the Central Bank. The GP will continue to constitute a regulated financial services provider but will no longer require a separate authorisation, which will further enhance the authorisation process. As pre-approval controlled functions, the directors of the GP will continue to be subject to the Central Bank's fitness and probity requirements.

The Guidance applies to closed-ended QIAIFs ("CE QIAIFs") which generally invest in illiquid assets. It expressly provides for CE QIAIFs to issue shares at a fixed price without Central Bank approval, apply excuse and exclude provisions, invest on a staged or tranched basis and allow for management participation for fee purposes.

TAX –
HEADLINE POINTS FOR ILPS

Tax Transparent	The ILP is tax transparent for Irish tax purposes and is not subject to Irish tax on its investment income and gains.
Subscription Tax	No Irish subscription taxes are payable on cash subscriptions.
Taxation of Income and Gains	For the purposes of Irish taxation, the income and gains of the ILP are treated as arising to each LP in accordance with the apportionment under the LPA as if the income or gains had arisen to the relevant partner without passing through the hands of the ILP.
VAT Exemption	Wide ranging VAT exemptions are available with respect to the provision of certain standard services to ILPs (e.g. investment management, administration, transfer agency etc.).
Stamp Duty	In general, no stamp duty is payable in Ireland on the issue, transfer, re-purchase or redemption of partnership interests in an ILP. Specific rules apply if the ILP has invested, directly or indirectly, in Irish real estate.
Exchange of Information	Ireland is fully compliant with the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Ireland has fully implemented both the US FATCA regime and the OECD common reporting standard ("CRS"). ILPs are thus capable of complying with international FATCA and CRS requirements. Provided that the GP in respect of the ILP complies with its FATCA obligations, no FATCA withholding should apply on payments from US sources.
Treaty Access	The ILP does not have separate legal personality and is treated as tax transparent under Irish law. As such, the ILP is not generally able to claim the benefits of Ireland's network of double tax treaties. LPs may be able to access the double tax treaty in place between their home jurisdiction and the jurisdiction where the assets are located and may be able to benefit from reduced withholding tax rates or be able to reclaim withholding taxes suffered in particular countries on that basis.

SUSTAINABLE INVESTMENTS

The European Commission's Action Plan: Financing Sustainable Growth ("Action Plan") sets out the EU Strategy to integrate ESG considerations into its financial policy framework and mobilise finance for sustainable growth. A key objective of the Action Plan is to create an environment to raise the estimated €175 and €290 billion per year of private capital needed to finance a sustainable infrastructure and related investment.

The European Commission also presented its Green Deal in December 2019. This hugely ambitious project sets out a growth strategy aiming to make Europe the first climate neutral continent by 2050. As part of the Green Deal, a European Green Deal Investment Plan (the "Plan") was presented in January 2020 seeking to mobilise at least €1 trillion of sustainable investments over the next decade. The Plan envisages a framework to facilitate the public and private funding needed for a transition to a climate-neutral, green, competitive and inclusive European economy.

Irish investment funds and, in particular, the ILP are expected to play a significant part in raising private capital.

For further information in respect of Ireland as a centre for Green Finance, see our **Guide to Sustainable Investments Funds**.

ALTERNATIVE STRUCTURING OPTIONS

In addition to the ILP, there are a number of other Irish structuring options available for QIAIFs which may be appropriate depending on the investment strategy or investor preference/familiarity.

Type of Structure	Comments
Corporates (PLCs and ICAVs) (Single Fund or Segregated Umbrella Funds)	Most popular structure for Irish funds. Widely used as mutual funds, liquid alternatives, hedge funds, credit, real estate funds and some real asset investments. While the market has been waiting for updates to the ILP, the ICAV has emerged as a strong alternative for closed-ended strategies, including for private equity.
Unit Trusts (Single Fund or Segregated Umbrella Funds)	The Unit Trust was widely used by UK and Asian markets where there is a long history of investment trusts. It can also provide legal, regulatory and other efficiencies for investors who are familiar with the vehicle.
Common Contractual Funds (Single Fund or Segregated Umbrella Funds)	The Common Contractual Fund ("CCF") was designed as a tax transparent fund and initially aimed at institutions and managers who required large asset pooling structures (e.g. cross-border pensions). It is widely recognised in international tax treaties and is increasing in popularity owing to certainty of tax treatment.
Limited Partnerships (Single Fund)	Limited Partnerships are an unregulated alternative to the ILP. Historically they have been used for Irish VC and smaller fund structures, with the ILP preferred for international offering and master funds.

HOW THE MAPLES GROUP CAN ASSIST YOU

Our Funds & Investment Management group is consistently recognised as the leading advisor in the Irish investment funds market. We have extensive expertise and know-how on the establishment, structuring and on-going operation of all types of authorised AIFs and, in particular, ILPs, and had a key involvement in the discussions between industry, the Irish Government and the Central Bank about the ILP enhancements.

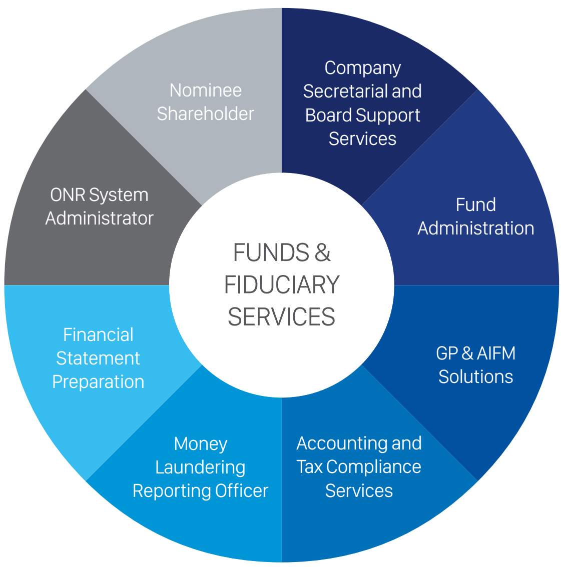
Combining the Maples Group's leading private funds practices in other key domiciles where limited partnership structures are common, such as the Cayman Islands, BVI, Jersey and Luxembourg, we have a unique vantage point and are well placed to advise on how to tailor the ILP product to suit international asset managers and their investors as well as to provide advice on other global partnership structures.

In addition to legal, regulatory and tax advice our colleagues across the Maples Group can provide a wider range of services including:

(i) Management company services to ILPs and / or providing GPs and AIFM solutions;

(ii) Fund administration; and

(iii) Registered offices, board support and fiduciary services to GPs.



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The Maples Group is a leading service provider offering a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. We distinguish ourselves with a client-focused approach, providing solutions tailored to your specific needs. Our global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure that clients gain immediate access to expert advice and bespoke support, within convenient time zones.

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