

Ireland Update: Commencement of the Investment Limited Partnerships (Amendment) Act 2020

The Investment Limited Partnerships (Amendment) Act 2020 (the "Act"), which amends existing investment limited partnership ("ILP") law, has been welcomed as a positive development in Ireland. It introduces a number of important changes which aim to position the ILP as a leading EU fund vehicle for private equity, sustainable investments and closed-ended alternative funds.

The majority of the Act's provisions commenced on 1 February 2021. The remaining sections, containing the new provisions on beneficial ownership for ILPs and common contractual funds, will take effect on 1 March 2021.

The ILP is a regulated common law partnership structure which will now be of significant interest to Irish and international managers marketing to EU investors and wider global markets given its new enhanced structure. The new ILP falls within the AIFMD regime and is able to avail of the marketing passports and associated investor protection features. Further, an ILP established as a QIAIF will have no material investment or borrowing restrictions and, as a result, can be used to acquire all types of portfolio companies and underlying assets including in the private equity, infrastructure, environmental, social and governance, credit and alternative asset sectors.

It is hoped that the Act will create additional jobs and opportunities in the Irish market in

particular, which is particularly timely given the challenges posed by Brexit and recovery from COVID-19.

Overview of the ILP

The ILP is constituted pursuant to a limited partnership agreement in accordance with the Investment Limited Partnerships Act 1994 (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 an "LP") on the other hand. It 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) supervised by the Central Bank as a GP or 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

an 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 "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.

While the ILP has been available since 1994, only a small number of these structures were established due to the availability of more attractive limited partnership regimes in other jurisdictions. In reforming the ILP Act, elements of such regimes have been drawn upon to ensure that this legislation has been brought in line with comparable structures in other leading jurisdictions.

Key Legislative Enhancements

As noted above, the Act has been introduced to enhance the attractiveness of ILPs for international investors. The main provisions are:

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 for voting/approval purposes.

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 the removal of the requirement for:

- (a) 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
- (b) An 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

Removal of requirement for all partners to consent in writing to amendment of the Limited Partnership Agreement ("LPA").

Provision for amendment of the LPA where provided in the LPA:

- (a) 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
- (b) Where approved by a majority of partners.

Umbrella Partnerships

The ability to establish ILPs as umbrella funds, with segregated liability between sub-funds.

Migration of Partnerships

The ability to migrate partnerships into and out of Ireland on a statutory basis.

For further information on the Act please see the Maples Group guide on the matter: *The Irish Investment Limited Partnership – A Guide for Asset Managers*¹.

How the Maples Group Can Help

The Maples Group is globally recognised as a leader in private equity and closed-ended fund legal advice², along with the provision of a comprehensive suite of solutions which include AIFMD fund management, fund administration and registered offices, board support and fiduciary services to GPs. We look forward to

¹ <https://maples.com/en/services/specialty-services/irish-investment-limited-partnership>

discussing the investment and distribution opportunities with our international clients and their advisors.

Further Information

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