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## The investment limited partnership: A new dawn for Irish private funds



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With consistently low and in some cases negative interest rates and high valuations in public equities, the hunt for yield has enticed more investors to consider allocating to illiquid asset classes in long-term, closed-ended products.

Private equity (PE) and venture capital (VC) has experienced an average growth rate of 9.9% over the past decade, with assets under management recently exceeded a record \$4.74tn.<sup>1</sup> Limited partnerships have been and continue to be the structure of choice for PE and VC investors and sponsors.

Against this backdrop, the Irish government has worked in collaboration with the Irish funds industry and the Central Bank of Ireland (**Central Bank**) to modernise and enhance the existing Irish investment limited partnership (ILP) legislation. The outcome of this collaboration is a modern, efficient, regulated yet flexible partnership vehicle.

### What is the ILP?

The ILP is a regulated, AIFMD-compliant common law partnership structure, tailored specifically for Irish investment funds. The ILP is established on receiving authorisation by the Central Bank and, as with its international counterparts, is formed by a limited partnership agreement (LPA) entered into by one or more general partner(s) (GPs), who manage the business of the partnership on the one hand, and any number of limited partners (LPs) on the other hand.

Since the ILP has no legal personality, it acts

through its GP, who is ultimately liable for the debts and obligations of the ILP. The GP can be a standalone entity who appoints an external alternative investment fund manager (AIFM) or it can be an Irish or EEA AIFM.

There are no restrictions on the number of LPs that can be admitted to an ILP. As they are passive investors, their liability is limited to the value of their investment, except where they become involved in the management of the partnership. The ILP legislation includes a non-exhaustive list of safe harbour activities that can be carried out by LPs without being deemed involved in the management.

All of the assets, liabilities and profits of the partnership belong to the partners in accordance with the partnership agreement.

The ILP is tax transparent for Irish tax purposes and is not subject to Irish tax on its investment income and gains. For Irish tax purposes, 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.

### A regulated yet flexible partnership structure

As a regulated structure, the ILP can be set up as a qualifying investor AIF (QIAIF) or a retail investor AIF. Historically, managers have been most interested in the QIAIF category, which is designed for sophisticated investors and is very flexible. In order to invest in a QIAIF, investors must meet the “qualifying investor” criteria and

<sup>1</sup> 2021 Prequin Global Private Equity & Venture Capital Report.

commit at least €100,000. ILP QIAIFs can be structured to suit all major investment strategies and can avail of a full suite of liquidity options making it suitable for PE, real estate, venture capital, infrastructure, sustainable finance, credit, lending vehicles, managed accounts, hybrid funds and hedge funds. ILP QIAIFs are not subject to legal risk spreading obligations, making them extremely useful for single asset funds and/or funds with very concentrated positions.

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.

Furthermore, there are 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. There is also flexibility for an ILP to utilise subscription financing, margin lending, NAV and other types of facilities including total return swaps and other derivative arrangements.

One of the key selling points of the ILP QIAIF is its speed to market. Provided that all service providers (AIFM, investment manager, depository, administrator) are approved by the Central Bank in advance, the ILP can avail of the Central Bank's 24-hour authorisation process.

### Enhancements to the ILP

The enhanced ILP legislation (the Act) came into effect on 1 February 2021 and introduced a series of best practice features, some of which are set out below.

Clarification of rights and obligations of LPs	<p>LPs can be divided into sub-categories for example for regulatory reasons, fee treatment, rights and voting.</p> <p>The concept of a "majority of limited partners" provides flexibility to specify a majority by number, value, class or a majority that is higher than a simple majority.</p> <p>Expansion of the non-exhaustive list of safe harbor activities, which can be performed without affecting limited liability status, including participation on LP investment committees.</p>
Simplification of the administration of changes in GPs	<p>Provision for the statutory novation of assets and liabilities on substitution of a GP without further formality.</p> <p>Express confirmation of the ability to transfer a GP's interest and provision for the liability of incoming and outgoing GPs.</p>
Changes designed to make ILPs run smoother	<p>It is no longer necessary for all partners to consent to changes to the LPA and the Act allows for approval by a majority of partners or without partner approval where the depository certifies that the change is non-prejudicial.</p>
Umbrella funds	<p>The Act allows ILPs to be set up as an umbrella fund with segregated liability between sub-funds. This is unique among common law partnerships and allows ILPs to be set up with multiple sub-funds.</p>
Migration of partnerships	<p>The Act allows for the migration of partnerships into and out of Ireland on a statutory basis, removing uncertainty associated with the legal migration of a partnership.</p>
Alternative foreign name	<p>An ILP can now register an "alternative foreign name", with official recognition.</p>

## Central Bank Guidance

In parallel with enhancement introduced by the Act, the Central Bank has published helpful Guidance on share class features of closed ended QIAIFs. This clarifies the ability to facilitate key features of PE funds.

The Guidance specifically provides for:

- the issue of interests at a price other than NAV, without prior Central Bank approval;
- application of excuse and exclude;
- stage investing; and
- management participation through establishment of management or “carry” classes.

As well as providing for these helpful features, the Central Bank clarified that it no longer requires a GP who appoints an external AIFM to be separately authorised. Instead it relies on the directors of the GP being subject to the Central Bank’s fitness and probity requirements.

## Sustainable Investments

Any discussion of the enhanced ILP would not be complete without further focus on 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.

Owing to the flexibility on investment restrictions, borrowing and related features as well as the speed-to-market, the ILP QIAIF 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 forestry funds, wind and solar power plants and this trend is likely to intensify with the recent enhancement of the ILP.

## Conclusion

The enhanced ILP and helpful Central Bank Guidance come at an opportune time where there have been increasing allocations to private funds from pension plans, insurance companies and other institutional investors, many of whom prefer or are required to invest through more regulated products. It also comes at a time where sustainable finance is a dominant theme in the European investment industry.

The modern and efficient ILP now strikes the right balance between regulation and flexibility and it is uniquely placed to meet the requirements of investors who require a regulated structure. Its flexibility and speed to market also position the ILP to play a significant role in raising private capital to meet sustainable investment targets set by the European Commission.