MASON HAYES & CURRAN

Investment Limited Partnerships

A new, flexible partnership vehicle

Key provisions of the Investment Limited Partnership (Amendment) Act 2020 (ILP Act) came into effect on 1 February 2021.

The ILP Act is designed to meet the needs of investment funds and their investors. Its objective is to modernise Ireland's regulatory framework for investment limited partnerships (ILPs).

With the new ILP structure, Ireland has a flexible partnership vehicle that is suited to the needs of promoters of private funds such as private equity, real estate, infrastructure and sustainable investment funds.

What is an ILP?

An ILP is a common law partnership and an alternative investment fund that is regulated by the Central Bank of Ireland (Central Bank).

As a common law partnership, an ILP is constituted under a limited partnership agreement entered into by at least one general partner (GP) and one or more limited partners (LP). An ILP is not a separate legal entity. The GP represents the ILP and may enter into contracts on its behalf. The principal business of an ILP is the investment of its funds in all kinds of property or securities.

As an alternative investment fund, an ILP may be established as a Retail Alternative Investment Fund (RIAIF) or a Qualifying Investor Alternative Investment Fund (QIAIF).

Key Enhancements

The ILP Act has reformed the regime for ILPs and introduced the following key enhancements:

Investor liability: The ILP Act expands the list of non-exhaustive activities (so-called safe harbour activities) that an LP may undertake without forfeiting its limited liability status. Under partnership law an LP's liability is limited to the amount of its paid-up capital and outstanding capital commitments. An LP's limited liability status may be forfeited if the LP takes part in management of the ILP.

Distributions and liability of LPs: The ILP Act clarifies that an ILP may distribute and return capital to LPs if the ILP is solvent at the time the distribution is made. Furthermore, the ILP Act clarifies that an LP shall not in any circumstances be liable for the debts or obligations of the ILP beyond the capital contributed by the LP.

Capital accounting: Guidance from the Central Bank on closed-ended funds clarifies that an ILP may use capital accounting and therefore LPs may have different levels of participation in an ILP's portfolio.

For example, one category of LPs may be excluded from specified investments, or due to stage investing, another category of LPs may participate only in future investments of the ILP.

Umbrella structure: An ILP may be established as an umbrella collective investment vehicle with multiple sub-funds. Under the ILP Act each sub-fund has segregated liability meaning a statutory ringfencing of assets and liabilities.

Migration: The ILP Act provides a statutory process to facilitate migration of partnerships established in other jurisdictions to Ireland by way of continuation. The application for migration by a migrating partnership is made to the Central Bank. The application follows much of the standard process for establishment and authorisation of an ILP.

Amendments to the LPA: Under the ILP Act an LPA can be amended by: (i) approval of a majority of LPs provided the LPA allows for changes via majority, or (ii) with the consent of the depository who is required to certify that the changes to the LPA do not prejudice the interests of the LPs.

Fast-Track Authorisation

The majority of ILPs are established as QIAIFs and are therefore subject to a fast-track regulatory approval process.

If an application (which includes the relevant certifications by the AIFM and depositary) to authorise an ILP is submitted to the Central Bank by 5pm on a business day, the ILP will be authorised by the Central Bank on the following business day.

Tax Status

From an Irish tax perspective, an ILP is tax transparent meaning that the ILP is not subject to tax on its income or gains. Consequently, there should be no tax leakage when using an ILP.

Under Irish tax rules, income, gains or losses of an ILP are treated as directly arising in the hands of the LPs in the proportions set out in the partnership agreement. In addition, distributions and returns of capital to LPs are not subject to Irish withholding taxes.

Benefits of an ILP

Regulatory status: The ILP is a regulated alternative investment fund and is subject to the prudential supervision of the Central Bank. As a regulated alternative investment fund established in an OECD onshore jurisdiction, an ILP should be a suitable vehicle for raising capital from European institutional investors who are often restricted by the extent to which they can invest in unregulated vehicles or offshore vehicles.

Capital raising: An ILP that is managed by an authorised AIFM in the EU can avail of the marketing passport under AIFMD and may be marketed to professional investors throughout the EEA.

Flexible fund product: An ILP authorised as a QIAIF is not subject to material investment restrictions and the type of assets an ILP may hold is not restricted. Accordingly, ILPs may be established as, for example, real estate funds, private equity funds or infrastructure funds.

Ireland as a Centre of Excellence: Ireland is the largest fund administration centre in the world with more than €6.5 trillion assets under administration. Ireland's attraction as a fund domicile is based on the combination of the Irish legal and regulatory system, the specialist skills and expertise of its workforce, the country's pro-business approach, infrastructure, competitive tax environment and government support.

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