Investor &
Treasury Services

WILLIAM FRY

Irish Investment Limited Partnership

An enhanced option for private funds

One of the fastest-growing European funds markets, Ireland has become a jurisdiction of choice to domicile and service private funds.

Contents

Foreword

Private assets have been increasing in popularity as investors seek higher returns in a persistently low interest rate environment. Research firm Preqin reports that alternative assets, including private equity, private debt, hedge funds, real estate and infrastructure, increased an average of 10.2% per year to USD 10.74 trillion over the 10-year period ending in 2020.[1] This growth is projected to continue at an annual rate of 9.8% to USD 17.16 trillion by 2025, driven by a number of factors such as government stimulus programs in response to COVID-19 and rising demand for the financing of sustainable investment.

Ireland's long-standing reputation for a clear and practical regulatory framework supports international fund distribution through the alternative investment fund manager (AIFM) European Economic Area passport. One of the fastest-growing European funds markets, Ireland has become a jurisdiction of choice for the domiciling and servicing of private funds. This follows the adoption of a new regulatory framework, which is set out in the Investment Limited Partnerships (Amendment) Act of 2020. Signed into law during the latter part of 2020 and taking effect in February 2021, the amended ILP legislation offers a limited partnership vehicle that is exclusively for use as an alternative investment fund (AIF).

The updated Investment Limited Partnerships (ILP) framework largely addresses the previous shortcomings of Ireland's limited partner fund structure, providing fund sponsors with access to a range of attractive features that match other private fund domiciles. The new and improved ILP fund structure includes a flexible limited partnership vehicle with an additional layer of Central Bank of Ireland (CBI) regulation that provides an enhanced level of comfort and value for investors.

Driving profitable growth

1) Preqin, Preqin Special Report: The Future of Alternatives 2025, November 2020

This report, jointly published by William Fry LLP and RBC Investor & Treasury Services, provides a high-level overview of the Irish ILP regime and its key features, including details of the legal and regulatory requirements to establish this private fund structure.

Attractive Fund Domicile[1]

An established international fund centre, Ireland has been supporting global fund distribution for over 30 years and continues to experience significant growth as a leading offshore fund domicile:

- Home to 14,498 funds with assets under administration exceeding €5.4 trillion
- Highly-regarded regulatory regime with the ability to support funds in more than 90 countries, including 30 languages and 28 currencies
- More than 16,000 well-educated professionals dedicated to the funds industry
- Ranked #1 in the world for attracting and retaining talent[2]
- Highly efficient, clear and certain tax regime that is open, transparent and fully compliant with Organisation for Economic Co-operation and Development (OECD) guidelines and European Union (EU) law
- One of the most developed and favourable tax treaty networks in the world, spanning over 70 countries across the EU, Middle East, Asia and South America
- Ranked #1 globally for hedge fund servicing
- Fastest-growing major cross-border UCITS domicile with UCITS funds accounting for more than 75% of Irish-domiciled fund assets
- Committed member of the EU and, as a consequence of Brexit, the only fully common-law country in the EU and the only native English-speaking member

Additional Layer of Protection

The ILP is a flexible limited partnership structure, with a range of features comparable to options in other private fund domiciles. However, it is important to note that, unlike unregulated partnerships elsewhere (e.g., English private fund limited partnership and Luxembourg SCSp Reserved Alternative Investment Fund (RAIF), where regulation applies only at the level of the AIFM), the ILP is subject to an additional layer of product regulation as an authorised fund.

In most circumstances, this distinctive dimension of the ILP adds value for sponsors and institutional investors alike, striking an appropriate balance of interests between general partners (GPs) and limited partners (LPs). When fundraising from regulated channels (e.g., insurers, private banks and pension schemes), the product rules overlay may be a benefit compared to unregulated structures, particularly in relation to investment committee allocation decisions on the investor side.

Only native English-speaking member of the EU

Ireland At-a-Glance[1]

14.5K	€5.4T	90	30	16K	#1
funds	assets under administration	countries that facilitate Irish funds	years supporting global fund distribution	well-educated financial professionals	globally for attracting and retaining talent

1) Irish Funds, Why Ireland, March 2021; 2) IMD World Competitiveness Rankings, November 26, 2020.

Source of Legal Certainty

A helpful aspect of the ILP is its detailed statutory underpinning through the Investment Limited Partnerships Act, 1994 (as recently amended) (ILP Act). This is a source of legal certainty for GPs and LPs alike. In reforming the ILP Act, authorities took a benchmarking approach that led to the adoption of "best-in-class" elements.

The legal form and principal features of the ILP are as follows:

- The fund structure is constituted by an Irish law-governed limited partnership agreement (LPA) between at least one GP and one LP, requiring a CBI certificate of authorisation for its establishment
- There is no separate legal personality
- The GP is responsible for management and operation of the ILP, has personal liability for the debts and obligations of the ILP, and contracts (directly or through its delegates) for the ILP
- Assets, liabilities and profits of the partnership belong to the partners in the proportions set out in the LPA
- The ILP provides LPs with the benefit of limited liability up to contributed capital (and outstanding commitments, subject to the LPA), which can be forfeited to the extent that they participate in management of the ILP; however, there is a statutory safe harbour with a non-exhaustive whitelist of permitted activities that will not lead to forfeiture of liability protection
- The fund regime is recognised as tax transparent as a matter of Irish law
- The ILP can be formed as an umbrella structure, including multiple sub-funds with statutory ring-fencing of assets and liabilities; this adds a useful dimension for sponsors compared to the standalone model typical for limited partnerships elsewhere; the flexibility to add sub-funds could assist with structuring solutions (e.g., co-investment) and accommodating different investor types, or as an efficient platform for the launch of follow-on funds or new strategies

Flexible Solution

CBI authorisation of the ILP is available in two product regime variants: a retail investor alternative investment fund (RIAIF) or a qualifying investor alternative investment fund (QIAIF). It is anticipated that the ILP will have the greatest appeal as a QIAIF, targeted at fundraisings from qualifying/sophisticated investors.

The QIAIF has a strong track record as Ireland's flagship regulated AIF solution and is readily familiar to international fund sponsors and institutional investors. The QIAIF rules (set out in the CBI's AIF Rulebook) introduce product regulation that is beyond the Alternative Investment Fund Managers Directive (AIFMD). However, these rules should not impede the customary flexibility and features typical for private asset limited partnership structures. For example:

- There are no material investment restrictions, eligible asset criteria or restrictions on borrowing
- Subject to certain mandatory terms, there is sufficient flexibility to achieve standard LPA terms and mechanics
- The customary features for closed-end private funds (e.g., capital drawdowns, excuse/exclude LPA provisions, carried interest, distribution waterfalls and catch-up payments) are all permitted features for QIAIFs generally

Strong track record

ILPs authorised as QIAIFs can utilise the CBI's fast-track approval procedure in most circumstances. While CBI authorisation is required to establish the ILP, it is usually achievable within one business day of completing the CBI filing. Access to the fast-track authorisation is subject to all parties to the structure having been previously approved or cleared by the CBI, and the directors of the GP having been determined to be fit and proper by the CBI. These pre-formation stage items, depending on the circumstances, will require approximately three to six weeks. For follow-on sub-funds in an umbrella ILP, there should be timing efficiencies to achieve authorisation.

Access to AIFM Passport

Since the ILP is an AIF, it requires an AIFM. As previously noted, the AIFM may act as GP, but this would be unusual given the personal liability dimension.

Having an EU-authorised AIFM provides access to the AIFM marketing passport for ease of fundraising from professional investors throughout the European Economic Area. This is an advantage over offshore/non-EU funds and the ILP can work well as part of a global fund platform, whether as a parallel fund to the offshore fund or as master fund in the overall structure.

An ILP, like other QIAIFs, will require additional service providers such as an authorised Irish depositary (per AIFMD), a CBI-authorised fund administrator (except where this function is retained by the AIFM) and an auditor.

The depositary of an ILP will carry out the following functions:

- Monitoring of cash flows
- Safekeeping of financial instruments
- Verification of an ILP's ownership of real assets (e.g., real estate)
- Oversight responsibility for a number of matters such as ensuring the proper calculation of the value of the limited partnership's interests in the ILP

In addition, the administrator of an ILP will:

- Calculate the Net Asset Value (NAV) of the ILP, and the ILP's income and expense accruals
- Prepare the ILP annual report
- Act as transfer agent
- Maintain the ILP's financial books and records
- Maintain the LP registers
- Arrange for payment of an LP's fees and expenses

Transparent Tax Regime

The ILP is considered to be tax transparent under Irish law. Accordingly, the relevant income, gains and losses are treated as arising directly to the partners in the proportions set out in the LPA.

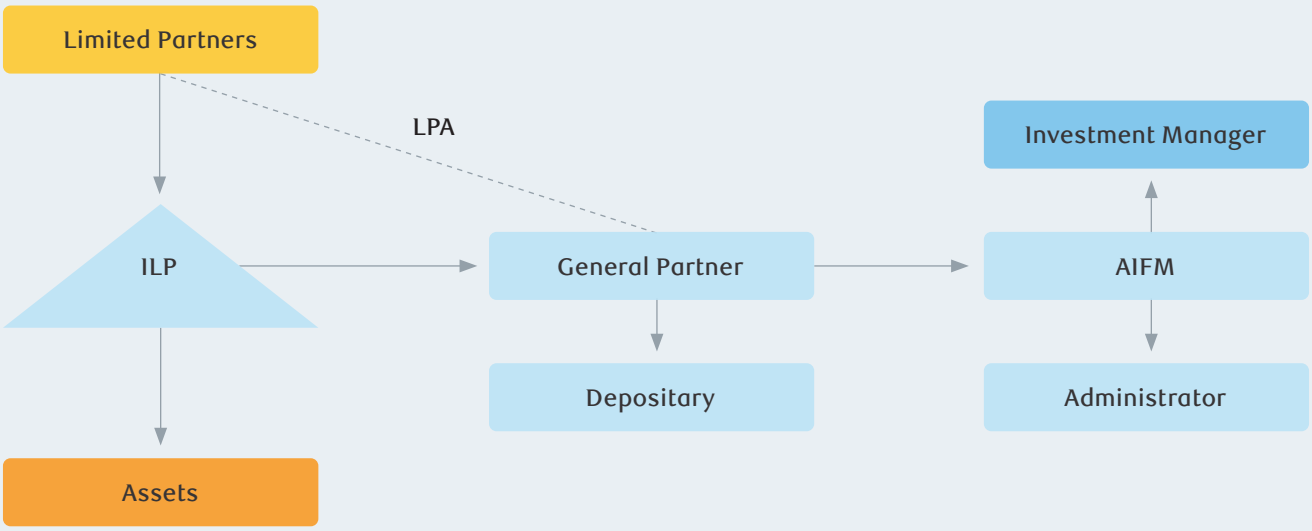
As the QIAIF ILP falls within the Irish-regulated fund regime, no Irish withholding taxes apply to fund distributions and no Irish stamp duty applies to transfers of ILP interests. In addition, the provision of management, administration and safekeeping services to the ILP is VAT-exempt.

Ease of fundraising

Irish ILP At-a-Glance

Flexible vehicle	Additional protection	Legal certainty	Attractive domicile

Parties to the ILP Structure



General Partner

GP eligibility	A body corporate or limited partnership may act as GP. The GP is not required to be authorised by the CBI and can be a non-Irish entity. If a body corporate, the directors of the GP do not have to be Irish residents but the directors must be approved by the CBI under its fitness and probity regime.
Delegation	Unless the GP is an authorised AIFM (or a registered AIFM in so far as the ILP is sub-threshold), the GP must appoint an AIFM with responsibility for investment management in accordance with AIFMD. The AIFM may delegate in accordance with AIFMD to an investment manager whether within or outside the EU. The entity needs to be cleared (if not already) by the CBI to act as such. The CBI advance clearance requirement is not applicable for a non-discretionary investment advisor.
Duties	In addition to the matters as may be set forth in the LPA, under the ILP Act, the GP's responsibilities include: • Consent to the admission of new partners • Maintaining proper books and records in relation to the ILP • Keeping a register of LPs and the partner capital accounts • Maintaining a register of beneficial owners of the ILP (i.e., individuals directly or indirectly owning a partnership interest of 25% or more) and reporting this information to the CBI for its central register • Attending to dissolution of the ILP
Exculpation	The GP's exculpation and indemnity rights will be subject to statutory limits under the ILP Act.
Change of GP	Any change to the GP is subject to CBI approval. The ILP Act expressly facilitates a statutory novation of assets and liabilities on change of the GP.

Limited Partners

Whitelist	An LP's liability for debts and obligations of the ILP is limited to the capital contributed and outstanding commitments. This protection may be forfeited to the extent and while the LP participates in management, but the ILP Act encodes a non-exhaustive whitelist of safe harbour activities, including: • Serving on an LP advisory committee • Voting on fund matters (e.g., change of investment objective and policy, amendment of the LPA, change of GP or admission/withdrawal of LPs and approval of accounts, and resolution of conflicts)
Capital Contributions	Capital contributions by partners may be in cash or in specie but not by way of a loan. LPs are only required to contribute capital in the circumstances provided for in the LPA.
Withdrawals	Return of capital is now streamlined. Subject to the LPA, capital can be withdrawn once the ILP has a positive net asset value and LPs will have no continuing claw-back risk.
LP categories	The ILP Act allows for different categories of LPs within an ILP, subject to the terms of the LPA.
Defaults	Where LPs default under the LPA (e.g., failure to pay capital calls), the ILP Act confirms that common remedies, such as forfeiture, forced sale or subordination, are not penal for the purposes of enforceability under Irish law.
LPA amendments	With recent reforms, the consent of all LPs is no longer necessary for LPA amendments. Changes can now be made, subject to the LPA terms, with the approval of a majority of LPs (as may be defined in the LPA) or otherwise without additional LP consents where so approved by the depositary as being non-prejudicial to the partners. CBI approval, which generally involves a filing and one day for approval, is necessary for LPA amendments.
Register	The default position, unless varied in the LPA, is that the register of LPs and the partner capital accounts should be maintained by the GP with inspection rights for the other partners, the depositary, the CBI and any other person (with GP consent).
Information rights	The ILP Act confers certain information rights on the LPs in addition to rights applicable under the AIFMD and CBI AIF Rulebook (e.g., to receive the annual report). Subject to the LPA, LPs (or their agents) may inspect and enquire to the GP regarding the business of the partnership.

How We Can Help

WILLIAM FRY

William Fry LLP is uniquely placed in the Irish market for our expertise across all aspects of private fund formation, regulatory advice, tax and downstream structuring, and private asset transactions. The depth and quality of our experience in the structuring, formation and ongoing operation of private fund structures is a key strength of our offering. We routinely advise Irish and international sponsors at the fund and deal levels, often acting on the investor side for early close investments in Irish and overseas private funds.

Investor & Treasury Services

RBC Investor & Treasury Services is a financially strong partner[1] that provides asset and payment services to corporate investors and financial institutions globally. Trusted with USD 3.8 trillion in client assets under administration,[2] we leverage data and technology solutions to deliver meaningful insights, simplify our clients' operations and support their growth. With long-standing operations and deep expertise in the key offshore fund centres of Ireland and Luxembourg, RBC Investor & Treasury Services is well positioned to support asset managers looking to distribute private funds globally. We are part of Royal Bank of Canada, one of the top 10 banks in the world.[3]

Contact Us

For more information on the ILP or other Irish investment structures, please contact the William Fry Asset Management Team:

John Aherne
Partner
john.aherne@williamfry.com

Niall Crowley
Senior Associate
niall.crowley@williamfry.com

Sergey Dolomanov
Partner
sergey.dolomanov@williamfry.com

For more information on how RBC Investor & Treasury Services can help develop an effective cross-border fund strategy, please contact:

David Giannone
Head, United States
david.giannone@rbc.com

Pat Sanderson
Head, Client Coverage, United Kingdom and Ireland
pat.sanderson@rbc.com

Nils Mordt
Director, Client Coverage, United Kingdom
nils.mordt@rbc.com

Claire O'Brien
Director, Client Coverage, Ireland
claire.obrien@rbc.com

Cyril Schopfer
Director, Client Coverage, United States
cyril.schopfer@rbc.com

1) Standard & Poor's (AA-) and Moody's (Aa2) legacy senior long-term debt ratings of Royal Bank of Canada as of August 24, 2021; 2) RBC quarterly results as at July 31, 2021; 3) Bloomberg as at August 13, 2021 based on market capitalisation.

rbcits.com | williamfry.com

12/21