



Matheson

The Irish Investment Limited  
Partnership: Partnering for  
Growth in Private Equity

March 2021

The highly flexible Irish qualifying investor alternative investment fund (“**QIAIF**”) regulatory framework best serves the needs of private equity, venture capital and “real economy” funds (such as property, infrastructure and renewable energy funds) established in Ireland in the vast majority of cases.

The QIAIF offers a trusted, flexible and efficient route for fund managers to comply with the requirements of, and to avail of the marketing benefits of the Alternative Investment Fund Managers Directive (“**AIFMD**”).

Legal vehicles through which a QIAIF can be structured include the investment limited partnership, the Irish Collective Asset-management Vehicle (**ICAV**), investment company, the unit trust and the common contractual fund.

As limited partnerships are the most recognisable and widely used investment fund vehicles globally for private equity, venture capital and “real economy” funds, this note provides an overview of a QIAIF established as an investment limited partnership pursuant to the Investment Limited Partnerships Act 1994 (“**ILP Act**”), (recently amended by the enactment of the Investment Limited Partnerships (Amendment) Act 2020).

(Each of the QIAIF vehicles is considered more fully in our “Establishing a Qualifying Investor Alternative Investment Fund in Ireland” Brochure and “Establishing a Private Equity Fund in Ireland” Brochure.)

### Investment Limited Partnerships

Investment Limited Partnerships (“**ILPs**”) can be established under the ILP Act for investment in assets of any kind with the authorisation of the Central Bank of Ireland (“**Central Bank**”). An ILP is created by contract between the general partner(s) and one or more investors who participate as limited partner(s), and will be subject to the AIF (Alternative Investment Funds) Rulebook issued by the Central Bank.

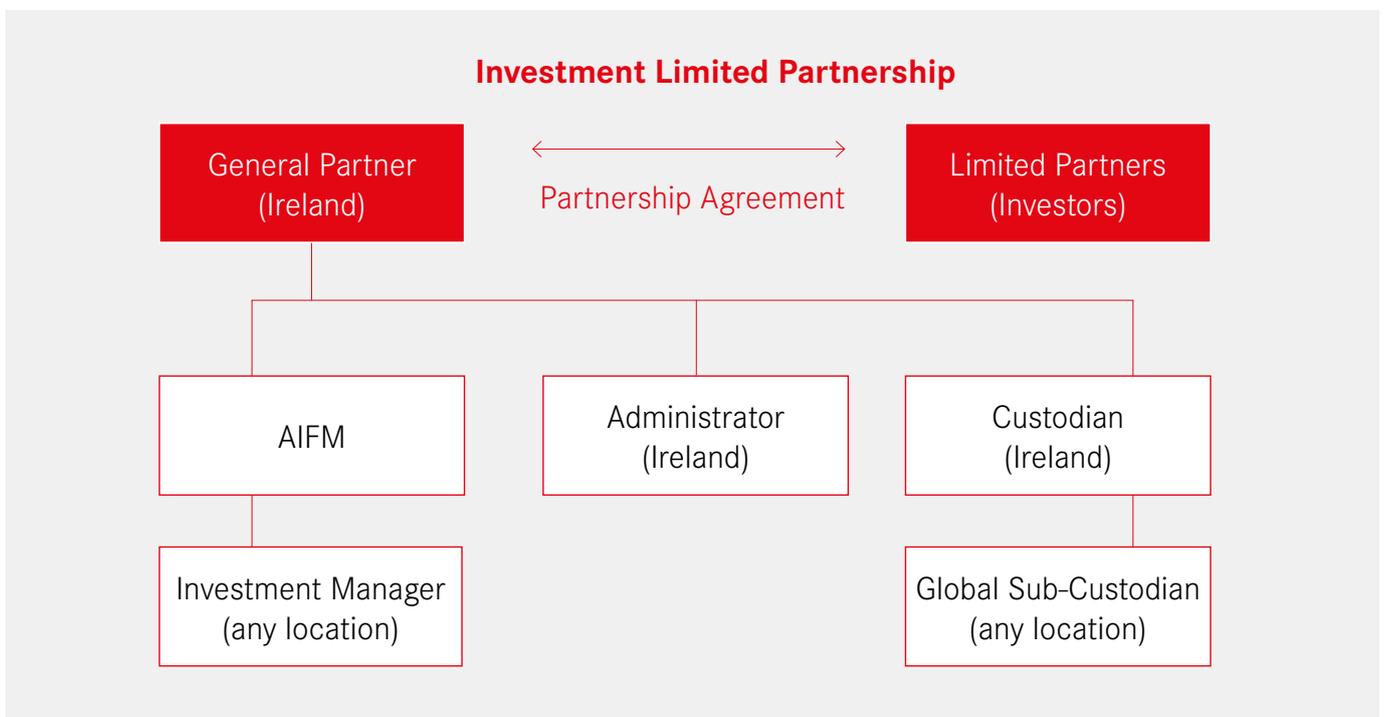
The ILP is not incorporated and is not a separate legal entity. An ILP does not therefore have power to enter contracts in its own name. The general partner usually enters into contracts for the account of the ILP. As with each of the structures referred to above, a depositary is required to be appointed to safe-keep the assets of the ILP.

There is no requirement under the ILP Act for an ILP to operate on the principle of risk spreading. ILPs can be dedicated investment vehicles or offered on a private placement or public basis. There is no limit on the number of limited partners permitted for an ILP.

The general partners of an ILP are responsible for the management of its business and are liable for the debts and obligations of the ILP. In general, a limited partner’s liability will not exceed the amount of its capital contribution or commitment to the ILP. However, a limited partner who participates in the conduct of the business of an ILP in its dealings with third parties may be liable on the insolvency of the ILP for debts incurred by the ILP in the period during which it participated in the conduct of its business, as if

such limited partner had been a general partner during this period. A limited partner’s liability in this regard is limited to debts or obligations incurred by the ILP in favour of a third party who, at the time that the debt or obligation was incurred, reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner. The ILP Act specifies certain activities which will not be deemed to constitute participation by a limited partner in the business of an ILP.

A typical ILP structure is illustrated below.



## Private Equity QIAIFs

Whether established as an ILP, ICAV, investment company or a unit trust, a private equity QIAIF:

- may provide for carried interest and waterfall mechanisms;
- may have broad and flexible investment policies and, in addition to an investment manager, may utilise non-discretionary investment advisers and investment committees;
- is not subject to any borrowing or leverage limits;
- may provide for partly paid units and capital commitment and drawdown provisions;
- may be open-ended, have limited liquidity or indeed be closed-ended;
- must appoint an investment manager which is a regulated entity approved by the Central Bank to act as an investment manager to Irish funds;
- may provide for investment through wholly-owned subsidiaries; and
- may include flexible valuation provisions, including the utilisation of Irish Venture Capital Association and European Venture Capital Association rules.

## Taxation of Investment Limited Partnerships

### Taxation of Fund and Investors

ILPs are not subject to Irish tax on income or gains derived from their investments or on their net asset value. Furthermore, there is no withholding tax on distributions from ILPs.

For Irish tax purposes, an ILP is ‘tax transparent’. This means that the income and gains accruing to it are treated as accruing to its partners in proportion to the value of the partnership interests beneficially owned by them as if such income and gains did not pass through the hands of the ILP. Due to their tax transparent nature, ILPs are not required to obtain declarations from non-Irish tax resident investors.

### Treaty Access

Because ILPs are tax transparent under Irish law, they do not benefit from the Irish tax treaty network. As a result, the relevant tax treaty is likely to be between the source country (where the investment is located) and the relevant partner’s country.

### Updates to the ILP

As referenced above, a large range of enhancements are due to be introduced to the ILP by the enactment of the Investment Limited Partnership (Amendment) Bill, initiated after a process of industry consultation. These enhancements are aimed at ensuring that Ireland has a ‘best-in breed’ regulated ILP partnership vehicle building on Ireland’s position as the domicile for choice for asset managers wishing to establish European investment funds. Matheson partners, through their involvement in a number of industry association committees, have been actively engaged in the recent updates to the ILP.

### The 1907 Limited Partnership

It is also possible to establish a private equity fund under the Limited Partnership Act 1907 (a “1907 LP”). 1907 LPs are not regulated by the Central Bank. The table set out in the appendix to this note compares the features of the ILP with the 1907 LP.

Please get in touch with your usual Asset Management and Investment Funds contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this briefing note.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at [www.matheson.com](http://www.matheson.com).

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	ILP	1907 LP
<b>Irish legal and regulatory regime</b>	Must be regulated and authorised by the Central Bank.	Not regulated by the Central Bank. Registered with the Irish Companies Registration Office (“CRO”).
<b>Legal Status</b>	Does not have separate legal personality and must act through its general partner.	Does not have separate legal personality and must act through its general partner.
<b>Need to appoint a local Irish administrator?</b>	Yes.	No.
<b>Need to appoint an Irish depositary?</b>	Yes.	No. Where access to the AIFMD marketing passport is required, an authorized AIFM and depositary must be appointed.
<b>Need to appoint an alternative investment fund manager (“AIFM”)</b>	An AIFM must be appointed which may also act as discretionary investment manager (or if not a separate investment manager may need to be appointed).	Given the broad definition of an AIF under AIFMD, it would need to be considered whether a particular 1907 Partnership constituted an AIF. In such circumstances, an AIFM may need to be appointed.
<b>Need to appoint an Irish general partner?</b>	At least one general partner must be Irish and such general partner must have two Irish resident directors.	No.
<b>Number of Limited Partners</b>	Unlimited.	Limited to 19 (save where the 1907 Partnership is for the provision of investment and loan finance and ancillary facilities structures where the limit is 50). In the case of a fund which has a higher number of investors, two or more parallel 1907 Partnerships may be established.
<b>Tax Status</b>	The ILP is generally accepted as a tax transparent entity. This applies for income tax, corporation tax and capital gains tax purposes. It means that the partners themselves are treated as directly holding the underlying assets in the partnership funds.	The 1907 LP is generally accepted as a tax transparent entity. This applies for income tax, corporation tax and capital gains tax purposes. It means that the partners themselves are treated as directly holding the underlying assets in the partnership funds.

	ILP	1907 LP
<b>VAT Exemption on Management Fees</b>	Yes.	No.
<b>Minimum capitalisation requirements?</b>	No.	No.
<b>Timing</b>	4 - 6 weeks	The entire process, as it is not subject to regulatory approval, is likely to take 2 - 4 weeks depending on how quickly the parties turn around the documentation.
<b>Disclosure obligations</b>	Central Bank will maintain a record of each investment limited partnership. Partnership documents will not generally be publicly available.	Identities of partners (and any change thereof) must be filed with Registrar of Companies.
<b>Financial Statements</b>	Audited financial statements must be filed annually with the Central Bank. In the case of an ILP which has appointed a fully authorised AIFM, a marketing passport is available so that partnership interests can be marketed to professional investors throughout the European Union.	Financial statements must be filed annually with the CRO (depending on the size of the 1907 Partnership, the financial statements may need to be audited).
<b>Marketing</b>	In the case of an ILP which has appointed a fully authorised AIFM, a marketing passport is available so that partnership interests can be marketed to professional investors throughout the European Union.	No marketing passport is available and partnership interests may be sold on a private placement basis, subject to local law requirements in the relevant jurisdictions (save where a fully authorised AIFM is appointed (along with a depository) in which case the marketing passport is available.
<b>Offering Memorandum</b>	The ILP is required to prepare an offering memorandum and have this approved by the Central Bank.	There is no requirement on the 1907 Partnership to prepare an offering memorandum.

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