Fund structures: *ILPs/ Investment Limited Partnerships*

Irish investment fund products can be constituted in various legal forms. A range of factors can influence the choice of legal vehicle, including tax treatment, risk spreading requirements, local market requirements and market preferences.

The structuring options include an Investment Limited Partnership (**ILP**), an Irish Collective Asset-management Vehicle (**ICAV**), a Variable Capital Company (VCC), a Unit Trust, and a Common Contractual Fund (**CCF**). This briefing looks at the ILP, and is part of a series on each of the above Irish fund structuring vehicles.

What is an ILP?

The Investment Limited Partnerships Act, 1994 provides for the creation of a limited partnership structure as an investment vehicle. An ILP is a partnership of two or more persons having as its principal business the investment of its funds in property of all kinds and consisting of at least one general partner and at least one limited partner.

How is an ILP created?

An ILP is created by contract (a partnership agreement) between the general partner(s) and one or more investors who are the limited partner(s).

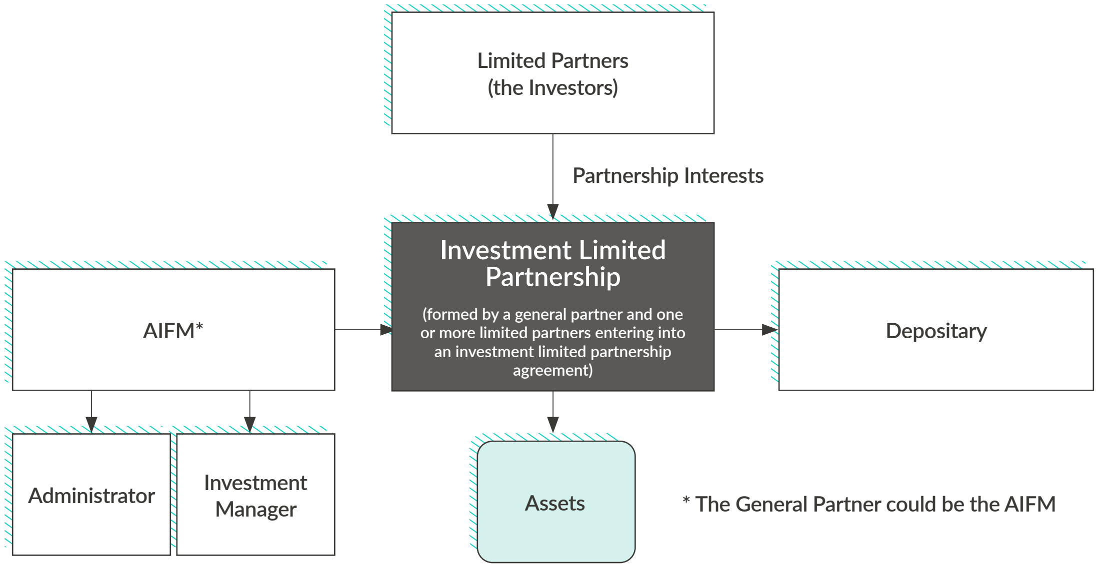
How is an ILP structured?

The limited partner is equivalent to the shareholder in a company while the general partner would be the equivalent of the management company in a unit trust. It is only available for alternative investment funds and it must have a general partner.

The ILP is not incorporated and so is not a separate legal entity. It does not have the power to enter contracts in its own name so the general partner usually enters into contracts on behalf of the partnership.

The Central Bank of Ireland (**Central Bank**) is responsible for the authorisation and ongoing regulation of an ILP and its general partner.

ILP/ Investment Limited Partnership



Regulatory regimes

An ILP may be authorised as an Alternative Investment Fund (**AIF**) in one of two categories:

- A Retail Investor AIF (**RIAIF**) which may be marketed to retail investors.
- A Qualifying Investor AIF (**QIAIF**) which may be marketed to Qualifying Investors.

Both RIAIFs and QIAIFs are subject to the AIFMD regime (which includes the Central Bank of Ireland's AIF Rulebook) and the provisions of the Investment Limited Partnership Act, 1994.

An ILP is not a suitable vehicle for a UCITS.

Liquidity

ILPs may be closed ended or open ended.

Umbrella/ Single fund/ Segregated Liability between sub-funds

Currently, ILPs may only be single funds. However, the ILP legislation is being updated so that ILPs may soon be established as umbrella funds with segregated liability between sub-funds (see below).

What do investors hold?

All of the assets and liabilities belong jointly to the individual partners in the proportions agreed in the partnership agreement.

Similarly, the profits are owned by the partners.

Main advantages

- ILPs are very popular collective investment vehicles globally and are used to invest in a broad range of asset classes across the alternative investments space.
- ILPs are particularly suited for private equity, real estate and infrastructure investment vehicles where the investment tends to be of a longer term nature with capital often drawn down over a period of years.
- The main attraction of an ILP is that the ILP does not have an independent legal existence in the way that a company does. All of the assets and liabilities belong jointly to the individual partners. Similarly the profits are owned by the partners.
- As a tax transparent vehicle the ILP structure is particularly suitable as an investment vehicle for investment in US securities with US advisers. They are also frequently used in the UK.
- An ILP is transparent for Irish tax purposes such that the income and gains of an ILP are treated as accruing directly to each partner of the ILP in proportion to the value of the interests beneficially owned by the partner.

Points to note

The Investment Limited Partnerships (Amendment) Bill 2020 (2020 Bill) is expected to be enacted soon. It will substantially overhaul the Investment Limited Partnership Act 1994. This will bring welcome changes that will help make Ireland an attractive location for the setting up of regulated ILPs. The main changes contained in the 2020 Bill include:

- A new definition of 'limited partner' which further clarifies the limited liability nature of a limited partnership interest.
- The ability to establish investment limited partnerships as umbrella funds with segregated liability between such sub-funds.
- Providing for the migration-in and migration-out of Ireland of ILPs.
- Greater clarity around the actions that a limited partner may take in connection with the limited partnership, without losing the benefit of limited liability.
- The ability to have an alternative foreign name of the limited partnership, which is helpful in a variety of jurisdictions such as China.
- Updating the provisions regarding capital contributions by limited partners and updating provisions relating to the return of capital which were out of sync with legislation for other types of Irish regulated fund vehicles and limited partnership law in other major jurisdictions.
- Clarity that a limited partnership agreement may provide that it can be amended with the approval of a majority of limited partners, by value, and a majority of the general partners. The consent of all limited partners will no longer be required, unless provided for in the partnership agreement.
- Various updates to bring the legislation in line with equivalent legislation applicable to the other types of Irish regulated fund structures.
- Providing greater ability for parties to agree specific terms that will apply in their partnership agreement.
- Making provision in respect of the beneficial ownership of ILPs, including a central register of beneficial ownership.
- Generally amending terminology to align with other regulated fund legislation and the AIFMD.

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