A&L Goodbody

Fund structures
Investment Limited Partnerships (ILPs)

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 series takes a look at each of these options.

What is an ILP?

The Investment Limited Partnerships (Amendment) Act 2020, amending 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?

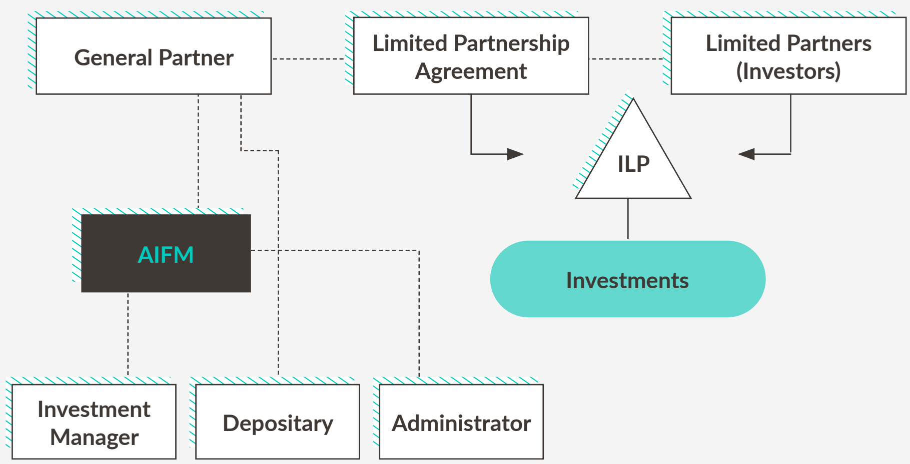
An ILP is created by contract, a partnership agreement, between the general partner(s) and one or more investors who are the limited partner(s).

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. An ILP is only available for alternative investment funds.

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 enters into contracts on behalf of the ILP.

ILP - structure



The Central Bank of Ireland (**CBI**) is responsible for the authorisation and ongoing regulation of an ILP. A general partner is not required to be authorised by the CBI as an AIF management company.

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. This is made up of the CBI's AIF Rulebook and the provisions of the Investment Limited Partnership Act, 1994 as amended by the Investment Limited Partnerships (Amendment) Act 2020.

An ILP is not a suitable vehicle for a UCITS.

Liquidity

ILPs may be closed-ended, open-ended with limited liquidity or open-ended. ILPs can use the full range of liquidity management tools and techniques permitted by the CBI.

Umbrella/Single fund/ Segregated Liability between sub-funds

ILPs may be established as umbrella funds with segregated liability between sub-funds.

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. Each partner is entitled to use any tax reliefs and allowances the partnership is entitled to as agreed between each partner, subject to any tax rules governing the allocation of the reliefs and allowances.

Main advantages

- ILPs are 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 or debt, real estate, infrastructure and energy 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. The improved Irish ILP structure is more comparable with US or Cayman partnerships.
- 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) Act 2020 (the 2020 ILP Act) came into force on 1 February 2020. It substantially overhauled the Investment Limited Partnership Act 1994. The main changes contained in the 2020 ILP Act include:

- A new definition of "limited partner" which further clarifies the limited liability nature of a limited partnership interest.
- Provisions enabling ILPs to be established as umbrella funds with segregated liability between each sub-fund.
- 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 was 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.
- Generally amending terminology to align with other regulated fund legislation and the AIFMD.

Key contacts

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Updated: February 2021