

Key Features of the Irish Investment Limited Partnership

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Contents

1. Introduction	3
2. Regulated EU AIF	3
3. What does an ILP look like?	4
4. Typical Private Equity and Real Assets Funds' Features	4
5. Particular Product Related Rules	5
6. Tax Transparency	5
7. GP, AIFM, Investment Manager and Depositary	6
8. Umbrella ILPs	7
9. Fast Track Authorisation Process	8
10. Participants in an ILP	8
11. Key Features in Focus	9
Contacts Points	24

1. Introduction

Following the recent overhaul of the Investment Limited Partnerships Act, 1994 (the “**ILP Act**”) and amendments made to the Central Bank of Ireland’s (“**Central Bank**”) AIF Rulebook, the Irish investment limited partnership (the “**ILP**”) is expected to become the fund structure of choice for many international investment managers, particularly those in the private equity and real assets sectors.

In this briefing, we highlight some of the key features of the ILP and the Central Bank authorisation process. Additional detail can be found in the section below entitled “[Key Features in Focus](#)” and in our other ILP related briefings available from our website page found [here](#).

Key Features of an Irish ILP

- Regulated EU AIF
- Tax transparent for Irish tax purposes
- Offers standard Private Equity/Real Assets fund features including but not limited to:
 - closed-ended/finite life
 - capital accounting
 - commitments, capital contributions and drawdowns
 - excuse and exclude provisions
 - defaulting investor provisions
 - distribution waterfalls and carried interest
 - advisory committee
- Clear statutory provisions around LP limited liability
- With an authorised AIFM, an ILP can be passported to market to professional investors in EU. Otherwise, may be sold in relevant EU Member States under national private placement rules (where available)
- Requires an AIFM but AIFM can be EU authorised, Irish registered (sub-threshold) or Non-EU, each with differing sales capacities
- Inward/outward migration capacity
- Real Assets Depositary option available
- Can be an umbrella with segregated liability between sub-funds

2. Regulated EU AIF

The Irish ILP is an EU alternative investment fund which, to operate, must obtain a certificate of authorisation from the Central Bank under the ILP Act. Thereafter, it is subject to the regulation and supervision of the Central Bank.

Two regulatory categories of ILP – RIAIF and QIAIF – are available, with the QIAIF (Qualifying Investor AIF) being the most popular due to the great flexibility it allows in terms of asset types, leverage and liquidity options and its eligibility, subject to certain considerations, for the Central Bank’s fast track authorisation procedure.

QIAIFs are restricted to investors who meet either the MiFID II professional client criteria or other specified qualifying criteria (see the details in the section below entitled “[Key Features In Focus](#)”) and, in each case, a minimum commitment requirement of Euro 100,000 per investor applies with the exception of certain individuals connected with the management of the ILP to whom no minimum commitment applies as described in paragraph 2 of the section “[Key Features In Focus](#)”.

3. What does an ILP look like?

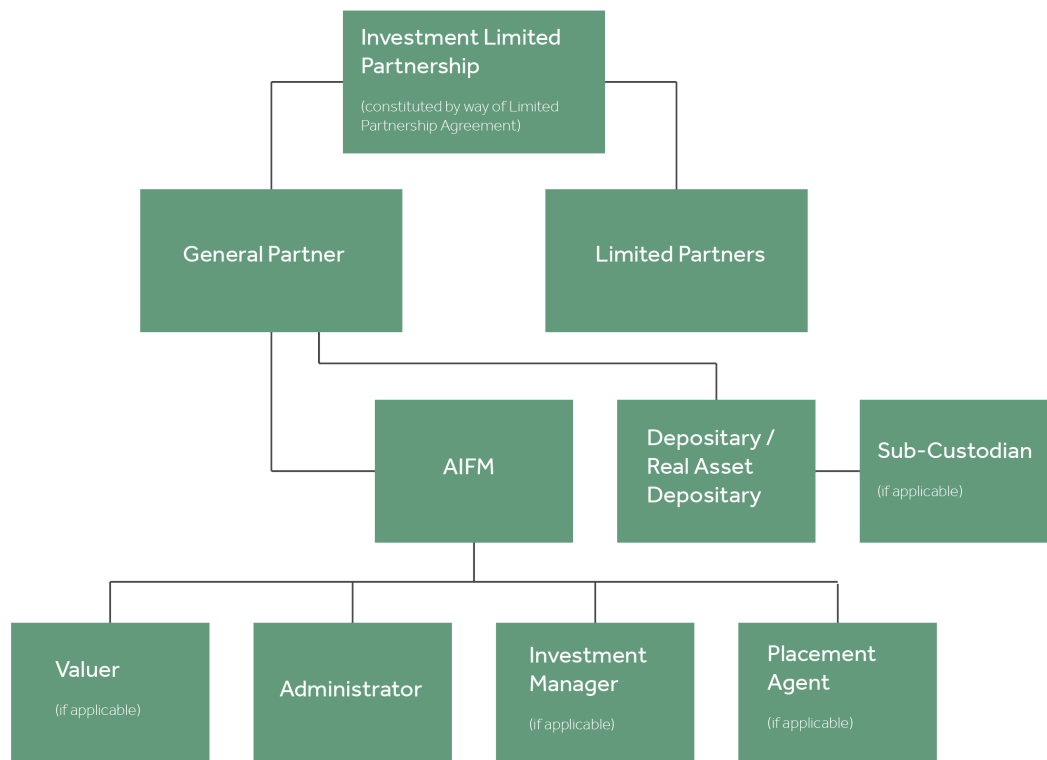
Like limited partnerships in most other jurisdictions, the ILP does not have separate legal personality. It is formed by means of a limited partnership agreement (“**LPA**”) entered into by one or more general partners (each a “**GP**”) and by one or more limited partners (each an “**LP**”).

The GP is charged with and is responsible for the management, control and operation of the ILP and of its investment activities, and has unlimited liability for the ILP’s debts and obligations of the partnership.

The LPs have no role in the conduct of the ILP’s business and are generally not liable for the debts or obligations of

the ILP beyond the amount they contribute or undertake to contribute to the ILP. The ILP Act provides certainty as to what LPs can do without being considered to be involved in the conduct of the ILP’s business. Actions which they can take without losing their limited liability status include serving on the ILP’s advisory committee (if any), voting as an LP on various matters and consulting with and advising the GP with respect to the business of the ILP.

The basic arrangement for an ILP without considering additional structural features such as feeder vehicles parallel vehicles, co-investment vehicles or subsidiaries is illustrated in the diagram below. Further information on the parties appointed to an ILP is provided below.



4. Typical Private Equity and Real Assets Funds’ Features

The ILP Act and the recent guidance published by the Central Bank ensure that the regulatory environment caters for typical features of limited partnerships, including:

- closed-ended/finite life
- capital accounting
- commitments, capital contributions and drawdowns
- excuse and exclude provisions
- defaulting investor provisions
- distribution waterfalls and carried interest arrangements
- co-investment
- parallel/alternative vehicles
- subsidiaries
- advisory committees

5. Particular Product Related Rules

It is important to note that EU authorised AIFMs of ILPs will be subject to AIFMD rules, including due diligence obligations in relation to illiquid assets and requirements in relation to taking controlling stakes in certain EU registered portfolio companies.

In addition, ILPs, being regulated by the Central Bank, will be subject to its rules, including any product specific type rules, as set down currently in its AIF Rulebook.

6. Tax Transparency

An ILP is treated as tax transparent from an Irish tax perspective in respect of all its income, gains and losses.

Any income, gains or losses which arise at the level of an ILP shall under Irish tax rules be treated as arising, or, as the case may be, accruing, to each partner of the ILP (in proportion to how income, gains and losses are shared under the terms of the ILP agreement) as if such income, gains or losses had arisen, or, as the case may be, accrued, to the partners without passing through the hands of the ILP.

Therefore, the allocation of income, gains or losses should follow the commercial allocation of profits under the LPA. However, to the extent that any of the ILP's profits are not allocated in any given year, they will be deemed be allocated to the GP.

To the extent the GP or any affiliate entity or any key individuals are not Irish tax resident (or in the case of the



GP or affiliate entity it does not have an Irish branch, agency or permanent establishment) then any carried interest arising, accrued or paid should not be subject to any Irish tax. Therefore in those circumstances, how the carried interest is treated for Irish tax purposes, should not matter.

Distributions can be made by an ILP to its partners free of any Irish tax implications as all the underlying profits of the ILP shall already have been allocated to partners for Irish tax purposes. Any underlying income, gains and losses of the ILP shall retain their original characteristic for Irish tax purposes in the hands of any Irish resident partners or any non-Irish resident partners holding their partnership interest in the ILP via an Irish branch, agency or permanent establishment.

Further information on the key tax considerations for an Irish ILP is set out in the section below entitled "[Key Features In Focus](#)".



7. GP, AIFM, Investment Manager and Depositary

The ILP requires a GP which we expect will be an Irish limited liability body corporate.

An AIFM and a Depositary (or Real Assets Depositary) must be appointed to the ILP as it is established as an AIF.

The AIFM can be an EU authorised AIFM, an Irish registered (sub-threshold) AIFM or a Non-EU AIFM. Only an authorised EU AIFM can market an ILP throughout the EU to professional investors using the AIFMD passport. No marketing passport is available to a registered AIFM or to a Non-EU AIFM – they can only use national private placement rules, where available.

Under Central Bank rules, an Irish registered AIFM appointed to a QIAIF type ILP must be replaced by an authorised AIFM within 2 years of the authorisation of the ILP.

A Non-EU AIFM requires approval from the Central Bank similar to that required from Non-EU entities providing discretionary investment management services to an Irish regulated fund.

The GP can be the AIFM but, due to its unlimited liability for the debts and obligations of the ILP, it is in practice unlikely to assume that role and instead be set up for and only act as GP to the particular ILP. GPs which are not AIFMs do require the prior approval of the Central Bank, but under a quite straightforward process which does not necessitate a full authorisation.

The AIFM can perform the portfolio management role but in many cases will delegate that to an Investment Manager (usually the fund sponsor). Such an Investment Manager will either be a MiFID authorised entity or a regulated Non-EU entity which has obtained Central Bank approval to provide discretionary investment management services to an Irish regulated fund.

The ILP's assets must be entrusted to a Depositary, which can either be a Depositary authorised for full range of assets or a Real Assets Depositary which has a very specific asset type focus and authorisation.

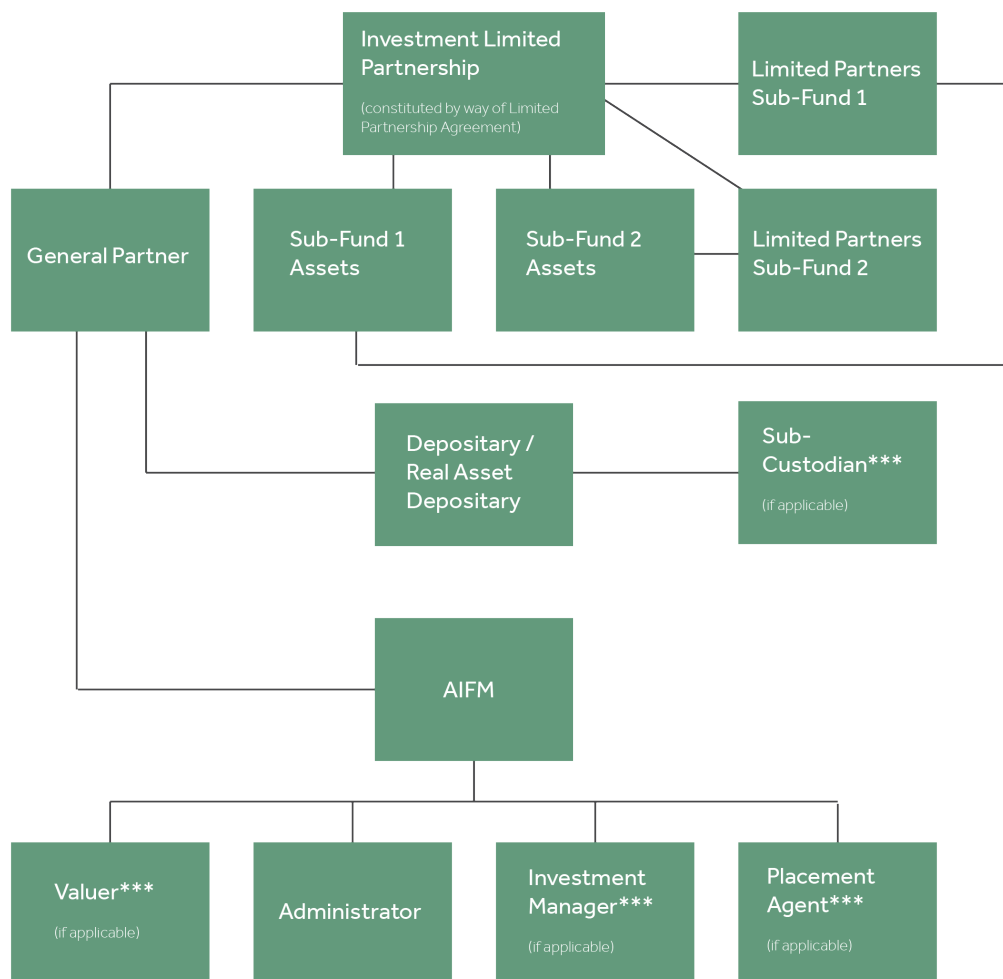


8. Umbrella ILPs

A unique and distinguishing feature of Ireland's ILP regime is the ability to form an ILP as an umbrella arrangement within which individual sub-funds can house different investment strategies or investor types.

The ILP Act provides for segregated liability between individual sub-funds established within the umbrella ILP.

Advantages of this umbrella structure include significant economies of scale and increased speed to market when compared with costings and timing implications involved in establishing separate limited partnership structures for each strategy/category of investor or successor, parallel or co-investment funds. It also removes the need to establish and operate a separate GP for each new structure or category of investor.



*** May be appointed in respect of individual sub-funds within the umbrella instead of being appointed to the umbrella ILP

9. Fast Track Authorisation Process

If an ILP is formed as a QIAIF, it will generally fall within the fast track authorisation process of the Central Bank as described below. The only exception to this will be where the ILP has what are in the Central Bank's view one or more features of an unusual nature which may need to be presented to the Central Bank by way of a written submission and approved in advance by the Central Bank.

Provided that all relevant service providers (including the GP, the AIFM, the Depositary and the Investment Manager) have

been authorised or approved or cleared to act by the Central Bank, as the case may be, the application for approval of the ILP should be submitted to the Central Bank by 3 pm on the business day before the proposed date of authorisation.

Assuming the application is complete and that the Central Bank does not raise any issues in relation to the application, a letter of authorisation of the ILP should issue by close of business on the business day immediately following the date of application.

10. Participants in an ILP

The table below identifies the key participants in an Irish ILP and some relevant Irish regulatory considerations.

PARTICIPANT	REGULATORY CONSIDERATIONS
Limited Partner (LP)	None, save that in the context of a QIAIF, the LP must be a "Qualifying Investor and must, unless it can avail of an available exemption, meet a minimum commitment requirement of €100,000. See section below entitled " Key Features In Focus " for further details.
General Partner (GP)	Does not need to be authorised by the Central Bank or other competent authority. The Central Bank must be satisfied as to its competence and probity, which necessitates a pre-clearance and the directors and partners of the GP being subject to its fitness and probity regime.
AIFM*	Can be an EU AIFM or non-EU AIFM. An EU authorised AIFM must be used if the ILP is to be marketed to professional investors throughout the EU under the AIFMD marketing passport.
Investment Manager**	Must be regulated in the provision of discretionary asset management services in its home jurisdiction whose regulator is recognised by the CBI Non-EU Investment Managers – Pre-Clearance by CBI EU Investment Manager – CBI Notification process only
Administrator**	Typically authorised by the Central Bank; however non-Irish EU AIFM may provide administration services to Irish funds on a cross border basis.
Depositary	Either a branch or Irish authorised wholly-owned subsidiary of a credit institution or a Real Assets Depositary.
Distributor/ Placement Agent **	A separate distributor or placement agent may not be required depending on distribution strategy. Any distributor or placement agent appointed by the AIFM must have the requisite licence to market the ILP in the relevant jurisdiction.

* Non-EU AIFM must comply with certain of the provisions of AIFMD.

**These roles may be performed by the AIFM where it has appropriate resources to do so but typically the AIFM employs third parties to perform these roles.

11. Key Features in Focus

NO	KEY FEATURE	COMMENTARY
1	REGULATED EU AIF AUTHORISED BY THE CENTRAL BANK	
(i)	Regulation can be seen as an additional (i.e. on top of legal/contractual) element of investor protection	Available as a regulated retail investor AIF (RIAIF) or as a qualifying investor AIF (QIAIF). The QIAIF is the more popular structure and is the structure considered further below.¹
2	QUALIFYING INVESTOR AIF ILP (QIAIF)¹	
(i)	Qualifying Investor AIF ILP	(a) Very few restrictions on what it can invest in or on investment mechanics. No leverage restrictions. Specific section of Central Bank's AIF Rulebook dedicated to QIAIFs. Guidance has also been published by the Central Bank to specifically address PE type investment and operating mechanics. (b) Minimum commitment of €100,000 or foreign currency equivalent, per investor, unless the LP can avail of an available exemption. See sub-paragraph (d) below for further details. (c) Can only accept subscriptions from an investor who: i. is a "professional client" within the meaning of Annex II of MiFID; or ii. receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF ILP; or iii. certifies that they are an informed investor by providing the following: • confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or • confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIAIF. NOTE: A QIAIF must not accept subscriptions from persons that group amounts of less than €100,000 for individual investors.

¹ While it is possible for an ILP to be established as a Retail AIF (or "RIAIF"), it is designed for the retail market. As a result it is subject to several investment and leverage restrictions which makes it less suitable for use to implement private equity/real assets investment strategies. An EU authorised AIFM must be appointed to a RIAIF and the AIFMD marketing passport is not available for use throughout the EU when the RIAIF is marketed to retail investors.

2 QUALIFYING INVESTOR AIF ILP (QIAIF) ¹	
(i) Qualifying Investor AIF ILP	(d) A QIAIF ILP may grant an exemption from the minimum commitment requirement to the following: i. the GP or the AIFM; ii. a company appointed as Investment Manager or to provide investment advice to the QIAIF ILP; iii. a director of the GP or the AIFM or a director of a company appointed to provide investment management or advisory services to the QIAIF; and iv. an employee of the management company, investment company or general partner, or an employee of a company appointed to provide investment management or advisory services to the QIAIF where the employee; • is directly involved in the investment activities of the QIAIF, or • is a senior employee of the company and has experience in the provision of investment management services. In the case of investments by employees, the GP must be satisfied that prospective LPs fall within the criteria outlined at (iv) above. The GP must also ensure that investing employees must certify to it that they are availing of the exemption and that they are aware that the QIAIF is normally marketed solely to qualifying investors who are subject to a minimum commitment of €100,000.
3 MARKETING RULES	
(i) An ILP managed by an authorised EU AIFM can be marketed throughout the EU to professional investors using the AIFMD passport. The AIFM could, alternatively, be an Irish registered (sub-threshold) AIFM or a Non-EU AIFM. However, only an authorised EU AIFM can market an ILP throughout the EU to professional investors using the AIFMD passport.	Within the EU, QIAIF ILPs may only be marketed to “professional clients” within the meaning of MiFID II unless the Member State in question permits, under the laws of that Member State, AIFs to be sold to other categories of investors and this permission encompasses investors set out in categories (C) (ii) and (iii) in the preceding “Qualifying Investor AIF ILP” section. No marketing passport is available to a registered AIFM or to a Non-EU AIFM – they can only use national private placement rules, where available.

4 DESIGNED, AND INTENDED, PRINCIPALLY FOR PRIVATE EQUITY, REAL ASSETS, INFRASTRUCTURE, GREEN INVESTMENTS WHERE ITS FEATURES INCLUDE	
(i) closed-ended (finite life plus extension capacity) ²	Offering document of closed-ended ILP must specify duration of the finite term and provide that, at the end of life of the ILP, the GP must decide to: a. wind up the ILP; b. convert to an evergreen ILP; or c. with the approval³ of LP's, extend the closed-ended period of the ILP.
(ii) capital accounting: general	ILPs use capital accounting. This facilitates differentiated participation by LPs in the ILP, for the return on particular assets to be allocated to particular capital accounts and for participation in the assets of the ILP otherwise than on a simple pro-rata basis. As a result, ILPs can incorporate excuse and exclude provisions, permit carried interests and allow for the issue of interests at a value other than a net asset value.
(iii) capital accounting: conditions to be satisfied	In order for an ILP to allocate the returns of a specific asset to a capital account, the following general conditions apply: a. the ability to establish capital accounts providing for specific features should be provided for in the LPA and has been disclosed to LPs in advance; b. the ILP's offering document permits the establishment of capital accounts which allow for different levels of participation; c. the LP's interest in the ILP is proportionate to: i. the capital it has paid into the ILP at a particular point in time; and/or; ii. the pre-determined flow of capital returns to the capital account; and/or iii. the extent to which the capital account held by the LP participates in the assets of the ILP. d. the ILP maintains records on a per-investor basis to enable it to clearly identify commitments paid and commitments outstanding for each investor; and d. the capital accounting methodology is consistent with the valuation rules set down under AIFMD.

² It is worth noting that there is nothing precluding an ILP from being open-ended or open-ended with limited liquidity however given the nature of the assets typically housed within ILPs, it is likely to be established as a closed-ended fund.

³ For QIAIFs offering redemptions at this stage, votes in favour of an extension must represent 50% of votes cast. For those not offering redemption at this stage, votes in favour must represent 75% of votes cast.

4	DESIGNED, AND INTENDED, PRINCIPALLY FOR PRIVATE EQUITY, REAL ASSETS, INFRASTRUCTURE, GREEN INVESTMENTS WHERE ITS FEATURES INCLUDE	
(iv)	capital accounts providing for management participation Management capital accounts may be established to facilitate carried interest, typically the allocation of a percentage of the value appreciation above the preferred return of the ILP in the relevant calculation period, provided that: - the conditions applicable to management capital accounts are detailed in the offering document, and - capital payments (both committed capital and preferred returns) are allocated to relevant LP capital accounts in priority to management capital accounts. The GP will generally structure (and disclose) the payment and calculation methodology of the carried interest payment (the "waterfall") so that the ILP must repay investment and management expenses, return LP's contributed capital and pay the accrued preferred return or hurdle rate before making distributions to the carried interest holders. The management interests in the ILP may be held via a remote vehicle which may be set up in a "good" tax country appropriate to the tax domicile of that management team	
(v)	clawbacks A matter of negotiation with LPs and disclosure in the offering documents, the LPA will generally provide for clawback provisions relating to the carried interest requiring the repayment of any excess carried interest paid to the carried interest holder during the term to ensure that the hurdle rate is met before carried interest is paid. Once provided for in the LPA and worked out operationally with a credit institution or, if it agrees, the Depositary, it should be possible to use escrow accounts for holding carried interest payments (or a portion thereof) until liquidation of the ILP's portfolio.	
(vi)	excuse and exclude provisions Excuse provisions (which enable an investor to be excused from an investment that the ILP proposes to make) and exclude provisions (which permit the ILP to exclude a Limited Partner from a proposed investment that the ILP proposes to make) are allowed once: - the excuse and / or exclude provisions are predetermined and documented by the ILP (in respect of excuse provisions by way of a written document between the GP and the LP prior to an investment being made in the ILP and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the offering document or LPA of the ILP); - a formal legal opinion must be provided by the limited partner or the GP (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked; - the board of the GP and AIFM must document: - whether or not it accepts the formal legal opinion so provided, and - the consequences of accepting or disagreeing with such opinion (for example, enforcing the LP's participation in the ILP in accordance with subscription terms or the resultant share class structure).	

4 DESIGNED, AND INTENDED, PRINCIPALLY FOR PRIVATE EQUITY, REAL ASSETS, INFRASTRUCTURE, GREEN INVESTMENTS WHERE ITS FEATURES INCLUDE		
(vii)	capital contributions, with commitments/ drawdowns (without need for a NAV calculation each time)	An ILP may provide for the issue of interests at a price other than net asset value without prior approval of the Central Bank to facilitate multiple closings and periodic drawdowns.
(viii)	defaulting investor provisions	The ILP Act makes it clear that a partner who fails to perform any of his obligations under, or otherwise breaches any provision of, the LPA (e.g. fails to meet a drawdown call) may be subject to, or suffer, remedies for, or consequences of, the failure or breach as specified in the LPA or otherwise under applicable law and that those remedies or consequences will not be unenforceable or rendered inapplicable solely on the basis that they are penal in nature. In a non-exhaustive manner, the ILP Act makes it clear that the remedies or consequences may include: - reducing, eliminating or forfeiting the defaulting partner's partnership interest or rights under the LPA; - subordinating the interest of the defaulting partner to those of the non-defaulting partners; - effecting a sale or forfeiture of the defaulting partner's interest; - arranging for a loan to the defaulting partner to allow him make good his commitment; - valuing the defaulter's interest by means of appraisal or formula and then the redemption or sale of the interest at that value. As noted, the statutory provision governing defaulting investors is not exhaustive. Other remedies available to the ILP (where provided for in the LPA) may therefore include damages and/or specific performance, withholding distributions, imposition of liability for related costs and application of "give-back" provisions.
(ix)	cure provisions	The ILP Act does not specify rigid timeframes within which a GP must declare an investor in default. Accordingly, the flexibility and ability of GPs to permit "cure" periods can be set out in the LPA. While a well-constructed LPA will build in flexibility in relation to "cure" periods etc, a GP does have a fiduciary obligation to the non-defaulting LP's and the ILP. Therefore, in exercising any discretion or flexibility permitted by the LPA, the GPs must not prejudice the interests of the ILP or the non-defaulting investors.
(x)	capacity for multiple closings; issuing at fixed price (not NAV); plus capacity to impose interest, etc. to equalise position with those committing at the earlier close	In order to facilitate the capacity for multiple closes and to ensure that each investor is made whole in such circumstances, the LPA and offering memorandum of the ILP may provide for an equalisation mechanism and the application of an interest rate charge to new LPs who are admitted at closings subsequent to the first close in order to reimburse those LP who have invested at first close.
(xi)	capacity for parallel and co-investing	Should be permitted once appropriately provided for in LPA, disclosed in offering memorandum and operated fairly.

4 DESIGNED, AND INTENDED, PRINCIPALLY FOR PRIVATE EQUITY, REAL ASSETS, INFRASTRUCTURE, GREEN INVESTMENTS WHERE ITS FEATURES INCLUDE	
(xii) normal PE valuation methodologies	Under applicable AIFMD requirements, annual valuation of the assets of the ILP will be required. However, the net asset value need not be calculated on the issue of additional interests in the ILP, on drawdown of capital commitments or on the payment of distributions to LPs. The methodology used to value the assets of the ILP must be set down in the valuation policy of the AIFM.
(xiii) normal distribution and return of capital functions	Distributions can be made during life of the ILP at intervals designated by the GP, in accordance with the LPA provisions. The method of payment and rules for determining application of income must be disclosed in the offering document.
5 GENERAL PARTNER	
(i) may be a natural person or a body corporate	Will generally be an Irish limited liability body corporate. This structure is preferred because the GP assumes personal liability for the debts and obligations of the ILP.
(ii) liable for the debts and obligations of the partnership	In the normal course of business, any debt or obligation assumed by a GP in the conduct of the business of the ILP will be a debt or obligation of the ILP.
(iii) where the GP is not the AIFM (which will generally be the case), the GP requires a limited form of approval from the Central Bank of Ireland which will require it to satisfy the Central Bank as to the fitness and probity of its Directors and partners	The GP could be the AIFM but, in practice, is unlikely to be due to the GP's unlimited liability for the debts and obligations of the partnership. Usually an AIFM will want to have the capacity to act as AIFM to more than one AIF. Therefore, the AIFM would not want to be in a position where, by virtue of acting as a GP to an ILP which got into financial difficulty, it could become liable for the debts of that ILP with the consequent negative impact on its AIFM activities relating to other funds under management. We expect that the GP will normally be a single use limited liability company as that should eliminate any contagion risk which could arise as a result of acting as GP to multiple ILPs.
(iv) where not the AIFM, the GP will	
(a) appoint the AIFM and have an ongoing oversight responsibility to oversee the AIFM	The AIFM agreement under which the AIFM is appointed by the GP must follow requirements of AIFMD and enumerate the AIFM's obligations under AIFMD and any other commercial terms agreed between the parties.
(b) retain responsibility for the issue of the offering document; and	This should be made clear in the offering document of the ILP.
(c) retain responsibility for the publication of the ILP's annual accounts	The contents of the annual accounts are prescribed by the Central Bank and subject to the disclosure requirements of AIFMD.

5 GENERAL PARTNER	
(v) other GP requirements include:	
(a) maintaining statutory books of the ILP at the registered office of the ILP	This includes register of LPs including names, addresses and contributions and return of contributions.
(b) furnishing information to the Central Bank on request	This includes all information and returns which the Central Bank considers necessary at its discretion for the due performance of the Central Bank's due performance of its statutory functions.
(c) holding information on the beneficial ownership of the ILP	The GP must take all reasonable steps to obtain and hold adequate, accurate and current information of the ILP's beneficial owners whose interests are above the thresholds of ownership/control including, inter alia, the name, date of birth, nationality, residential address and the beneficial owner of it.
(d) notifying the Central Bank of any change in particulars	Any changes to the authorisation particulars of the ILP must be provided to the Central Bank and shall not take effect until the Central Bank has issued a letter consenting to such a change.
(vi) it is possible to have more than one GP	It is likely that a single GP will be used.
6 LIMITED PARTNER	
(i) Can be a body corporate, a partnership or natural person	Must be a "Qualifying Investor" and must, unless it can avail of an available exemption, meet a minimum commitment requirement of €100,000. See above under "Qualifying Investor AIF ILP" for further detail.
(ii) The ILP can provide for different categories of LPs to facilitate different returns; carried interest, excused investors etc. As noted above, Irish law allows for side letters, subject to certain transparency obligations being satisfied	See section above entitled "Designed, and intended, principally for Private Equity, Real Assets, Infrastructure, Green Investments" for further information.
(iii) Subject to certain exceptions, LPs shall not be liable for the debts or obligations of the partnership beyond the amount contributed or undertaken to be contributed to the partnership	Helpfully, the ILP Act provides certainty by enumerating activities in which the LPs can participate which will not result in a loss of limited liability. These include the following: a. serving on any board or committee (such as an advisory committee) of the ILP, or established by, or as provided for in the LPA in respect of a GP, the LPs or the partners generally; b. appointing, electing or otherwise participating in the choice of a representative or any other person to serve on such board or committee; c. consulting with and advising a GP with respect to the business of the ILP; or d. investigating, reviewing, or being advised as to the accounts or business affairs of the ILP or exercising any right conferred by the ILP Act.

6 LIMITED PARTNER	
	e. voting as an LP on specific matters set down in the ILP Act which include for example: i. the dissolution and winding up of the ILP; ii. a change in the objectives or policies of the ILP; iii. the admission, removal or withdrawal of a GP or LP or Depositary and the continuation of the business of the ILP thereafter; and iv. a decision to approve an alteration in the LPA.
(iv) admission	LPs may be admitted on subscription, by way of drawdown of capital and by assignment.
(v) assignment of partnership interest	The LPA may provide for limitation on assignment rights to certain categories of investors and/or may require the prior approval of the GP.
(vi) voting	This is subject to the rules of the LPA and subject to disclosure requirements in the offering document.
7 APPOINTMENT OF AN AIFM	
(i) Authorised AIFM	As noted above, an AIFM must be appointed in respect of the ILP. The AIFM may be an EU "authorised AIFM" or an Irish "registered AIFM" or a Non-EU AIFM. The marketing capabilities will be dictated by which type of AIFM is used. An authorised EU AIFM can market the ILP throughout the EU to professional investors using the AIFMD passport.
(ii) Registered AIFM	A registered AIFM may only be appointed in respect of an ILP where the AIFM meets one of the following criteria: a. it, either directly or indirectly, through a company with which it is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or a. it, either directly or indirectly, through a company with which it is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF. NOTE: The Central Bank takes the view that only Irish registered AIFM may be appointed to Irish QIAIFs. Currently, the Central Bank's position is that a QIAIF which has appointed a registered AFIM needs an authorised AIFM within two years of launch. This undermines the benefits/practical use of a registered AIFM.
(iii) Non-EU AIFM	It is currently possible to appoint a non-EU AIFM to an Irish ILP provided that the AIFM is pre-cleared by the Central Bank and the GP contractually imposes certain AIFMD requirements on the AIFM.

7 APPOINTMENT OF AN AIFM	
(iv) AIFM will not be the GP in practice	It is possible for the AIFM to act as GP, but unlikely given issues relating to liability as described above.
(v) AIFM may not be within sponsor group	AIFM may be from outside the sponsor's group.
8 APPOINTMENT OF A DEPOSITARY	
(i) The GP must appoint a Depositary to the ILP to whom the assets of the ILP must be entrusted	
(ii) The Depositary must be one of the following:	
a. Credit institution or Irish branch of a credit institution	
b. Irish subsidiary of a credit institution where that Irish subsidiary has been authorised under the Investment Intermediaries Act 1995 to provide custodial services; or	
c. A Real Assets Depositary authorised by the Central Bank	The Central Bank has established a Real Assets Depositary regime under which an entity may be approved to act solely as a depositary to closed-ended funds which materially invest in illiquid assets such as interests in private companies, infrastructure and real estate. ⁴
9 ADVANTAGES OF UMBRELLA ILP STRUCTURES	
(i) economies of scale in the appointment of service providers	A single AIFM, Depositary and Administrator will be appointed to the umbrella ILP.
(ii) multiple underlying portfolio managers	It is possible to appoint a separate Investment Manager to each sub-fund of the umbrella.
(iii) segregated liability between sub-funds	The assets and liabilities of each sub-fund in the umbrella will be segregated from the assets and liabilities of other sub-funds, which segregation is protected by statute and will be further ring-fenced by contractual arrangement.
(iv) possible to issue separate offering memoranda for each sub-fund	Provided that all other sub-funds are named in each offering memorandum, a separate offering memorandum can be prepared for each sub-fund in the umbrella, so investors will not need to be provided with the details of the other sub-funds.

⁴ The Central Bank has set out a full list of assets which it considers a Real Assets Depositary can safe-keep at ID 1139 of its [Q&A on AIFMD](#)

10 FORMATION AND GOVERNING LAW MATTERS	
(i) Formed by two or more partners by means of an LPA	One or more GPs and one or more LPs will enter into the LPA, which may be amended and restated in accordance with LP negotiations.
(ii) Partnership Agreement must be governed by the laws of Ireland and subject (but not exclusively) to the jurisdiction of the Irish Courts	
11 PROCESS FOR APPLYING FOR AUTHORISATION OF THE ILP	
(i) Directors (or partners) of the GP must be pre-approval by the Central Bank of Ireland	The GP must have a Board of Directors who must be individually approved in advance by the Central Bank before the ILP can be authorised. Each prospective director of the GP must complete and submit an "Individual Questionnaire" through the Central Bank's Online Reporting System. The GP must confirm to the Central Bank that it has satisfied itself on reasonable grounds that each director (or partner) complies with the Central Bank's requirements regarding the fitness and probity. In order for the GP to give this confirmation, it is necessary for due diligence checks to be completed in respect of each director (or partner).
(ii) If not Irish and already authorised, the AIFM and Investment Manager (if different to the AIFM) must be pre-cleared by the Central Bank of Ireland to act	This step can run concurrently with step (i) above. A regulatory form must be completed on the Central Bank's website – generally by Irish counsel.
(iii) Where relevant, the GP and AIFM submit the key terms of the proposed fund in writing to the Central Bank for its consideration in advance of seeking authorisation of the ILP	If an ILP is formed as a QIAIF, it will generally fall within the fast track authorisation process of the Central Bank as described below. The only exception to this will be where the ILP has what are in the Central Bank's view one or more features of an unusual nature which may need to be presented to the Central Bank by way of a written submission and approved in advance by the Central Bank.
(iv) Filing of ILP application on a self-certified basis one business day before registration and authorisation takes effect	Subject to the above, a QIAIF ILP can be authorised by the Central Bank upon application, essentially on a filing only basis. This involves the filing of the following documents; - dated Offering Document; - dated and signed LPA and any amendments to same; - dated and signed Depositary Agreement; - dated and signed Administration Agreement; - dated and signed AIFM Agreement (presuming that the GP is appointing a separate AIFM); - dated and signed Investment Management Agreement (if the Investment Manager is not also the AIFM); - a certified copy of the GP's incorporation document and certificate of incorporation; - Central Bank regulatory application forms; - letter of application from the GP and the AIFM of the ILP seeking authorisation of the ILP from the Central Bank.

12 ADVISORY COMMITTEES	
(i) Use of advisory committees permitted and not subject to separate regulation	The key function of an LP advisory committee ("AC") is to oversee the alignment of interests of the GP/Investment Manager and LPs in the ILP. An AC will not have investment discretion, make any investment decisions or provide investment advice in relation to the ILP. It will normally be a forum to provide views that are representative of the broader LP base, act as the LPs' advocate when dealing with the Investment Manager and assist in the promotion in governance issues at the ILP (including discussions around conflict of interest or any proposed changes to the LPA) but it will not formally or otherwise act on behalf of all LPs.
(ii) Make-up of AC subject to negotiation	The AC will typically be comprised of at least three representatives of investors in the ILP, none of whom are affiliated with the GP or the Investment Manager. Its composition can be negotiated with initial-close LP's and may be amended from time to time by way of update to the AC's terms of reference. Although ideally the AC will be representative of the LPs as a whole, commitment size to the ILP is often the determinant of a seat on the AC.
(iii) AC governed by LPA	The set-up, duties and operation of the AC will normally be governed by the LPA which governance may be further substituted by terms of reference ("TOR") agreed between the GP and initial LPs. Governance rules for the AC may include the following: a. selection and rotation of members; b. powers, duties and extent of authorities of the AC; c. interaction of the AC with the GP and investment committee of the Investment Manager; d. procedures for and frequency of meetings of members; e. minimum attendance at meetings and removal of members for non-attendance; f. decision making procedures and voting rights of members; and g. review and amendment of TOR and LPA.
(iv) AC: Disclosures to LPs	Investors should be notified of the existence of the AC by means of disclosure in the offering document which details should include selection of members of the committee and the powers and duties of the committee; LPs as a whole should not be disadvantaged by the existence of the AC from the perspective of access to information and disclosure to investors. Points discussed at AC meetings and the results of any matters voted on should be made available to all LPs in a timely way.

13 OPERATIONAL MATTERS	
(i) Variation/Amendment of LPA	Changes to the LPA require majority investor approval unless the Depositary certifies that such changes do not prejudice the interests of LPs. The use of side letters, as provided for in the LPA, may avoid the necessity to amend the LPA in many cases.
(ii) Change in or addition to GP	Any such change must be notified to the Central Bank and approved prior to taking effect.
(iii) Change in Depositary	Any such change must be notified to the Central Bank and approved prior to taking effect.
(iv) Registered Office	Must be in Ireland
(v) Principal place of business	Must be in Ireland. It does not have to be at the Registered Office (though it often will be) and can be at the Irish office of the GP, AIFM, Administrator or Investment Manager if that is deemed most practical.
14 TRANSPARENCY OBLIGATIONS	
(i) Prior to Investment	Under applicable AIFMD rules and under applicable Central Bank requirements which apply to all QIAIFS, certain information must be provided to investors prior to acquiring an interest in the ILP. The offering memorandum (which is filed with the Central Bank as part of the application for authorisation of the ILP) must therefore provide information on matters including investment strategies, objectives and restrictions of the ILP, the use of leverage (including types and sources of leverage permitted and maximum leverage permitted), information on key service providers (including prime brokers), conflicts of interest, valuation procedures and fees and expenses. The main legal implications of the contractual relationship between the GP and the LPs must also be disclosed in the offering memorandum. The offering memorandum should also disclose where the latest annual report, historical performance of the ILP and latest valuation for the ILP can be accessed. Any material changes to the information contained in the offering memorandum must be disclosed to existing LPs via the annual report. A change to information contained in the offering memorandum is considered to be material if there is a substantial likelihood that a reasonable LP, becoming aware of such information, would reconsider its investment in the ILP.
(ii) Disclosures to be made on a periodic basis	Certain information must be provided to LPs on a periodic basis during the life of their investment, generally annually with the ILP's financial statements. This includes information on the current risk profile of the ILP and risk management systems used to manage such risks. The total amount of leverage employed by the ILP must also be disclosed to LPs.
(iii) Events triggering immediate notification obligations	Where the ILP employs leverage, the AIFM will also be required to report any changes to the maximum level of leverage which it can employ on behalf of the ILP and any right of re-use of collateral or any guarantee under the leveraging arrangements "without undue delay".

14 TRANSPARENCY OBLIGATIONS⁵	
(iv) Information to be included in annual reports	The ILP is required to prepare an annual audited report which must contain specific information prescribed under AIFMD and by the Central Bank. This annual report must be made available to LPs on request free of charge and must also be filed with the Central Bank. Amongst other information, the annual report must contain a balance sheet/statement of assets and liabilities and a report on the activities of the financial year, including an overview of investment activities during the year and an overview of the ILP's performance over the year.
15 SIDE LETTERS	
(i) Side letters may be used to detail specific terms agreed between the GP and an LP relating to the LP's investment in the ILP	Under AIFMD rules (which apply to EU authorised AIFMs), no LP in an ILP can obtain preferential treatment unless such preferential treatment is disclosed in the ILP's LPA/offering memorandum. In addition, any preferential treatment afforded to one or more LPs should not result in an overall material disadvantage to other LPs. LPs must be treated fairly subject to the GP's ability to distinguish between LPs under "excuse and exclude" and other relevant provisions of the ILP Act and relevant Central Bank guidance. In addition, these rules do not preclude a GP from negotiating specific terms with individual LPs by way of side letter, provided that the offering document addresses this possibility. The offering document should include a description of the type of preferential treatment which has or may be agreed with individual LPs. Such terms may include an entitlement to different disclosures/ reporting to LPs, different fee terms for the relevant LP or, for example, requiring the ILP to adhere to certain ESG policies, granting an LP a seat on any investment advisory committee or incorporating negotiated exclude/excused" provisions allowing the LP to choose not to participate in certain investments in certain circumstances. It is not necessary to identify the specific LPs with whom such tailored arrangements have been agreed in the offering document, however it should disclose the type of LPs who obtain such preferential treatment. Where relevant any legal or economic ties with the AIFM or the ILP will also need to be disclosed.

⁵ EU authorised AIFMs and non-EU authorised AIFMs deemed to be marketing AIFs in the EU must also report certain information relating to the ILP to their home Member State regulatory authority (in the case of an EU authorised AIFM) or host Member State regulatory authority (in the case of a non-EU AIFM) on a periodic basis.

Any income, gains or losses which arise at the level of an ILP shall under Irish tax rules be treated as arising, or, as the case may be, accruing, to each partner of the ILP (in proportion to how income, gains and losses are shared under the terms of the LPA) as if such income, gains or losses had arisen, or, as the case may be, accrued, to the partners without passing through the hands of the ILP.

Therefore, the allocation of income, gains or losses should follow the commercial allocation of profits under the LPA. However, to the extent any of the ILP's profits are not allocated in any given year, they will be deemed be allocated to the GP.

Distributions can be made by an ILP to its partners free of any Irish tax implications as all the underlying profits of the ILP shall already have been allocated to partners for Irish tax purposes. Any underlying income, gains and losses of the ILP shall retain their original characteristic for Irish tax purposes in the hands of any Irish resident partners or any non-Irish resident partners holding their partnership interest in the ILP via an Irish branch, agency or permanent establishment.

ILPs will have to make an annual return to Revenue specifying the total amount of income, gains and losses of the ILP, the name and address of each partner and the quantum of the total amount of income, gains and losses of the ILP allocated to (or deemed to be allocated to) each partner.

For other purposes of the Irish Tax Acts, an ILP may not be tax transparent. So for example, interest payments on borrowings of the ILP may be deemed to be made by the ILP for Irish withholding tax purposes.

While ILPs will not be a resident of Ireland for the purposes of Ireland's extensive double tax treaty network, partners (depending on where they are tax resident) may, due to the tax transparent nature of the ILP, be able to claim the benefits of a double tax treaty in their own jurisdiction to avoid, reduce or recover potential withholding taxes on underlying income and gains of the ILP

An ILP may be subject to VAT and may have an obligation to register for Irish VAT. Any of the typical VAT exemptions (for fund management, investment management, fund administration services etc.) which apply to Irish regulated funds also apply to ILPs. Assignments of partnership interests in an ILP should be exempt from stamp duty.

There is also an exemption from Irish gift and inheritance taxes in respect of ILP partnership interests provided the disponent and the donee or successor are neither domiciled nor ordinarily tax resident in Ireland.

It is expected that the majority of ILPs will be considered Financial Institutions for FATCA and CRS purposes and, therefore, will likely have registration, due diligence and annual reporting requirements.

17 INWARD & OUTWARD MIGRATION	
(i) Non-Irish Limited Partnerships Re-Domiciling to Ireland	Under the ILP Act, it is now possible for non-Irish limited partnerships domiciled in "relevant jurisdictions" to migrate to Ireland and be authorised as an ILP by the Central Bank by way of continuation. "Relevant jurisdictions" must be designated by way of statutory instrument but are expected to include Cayman Islands, the British Virgin Islands, Jersey, Guernsey and the Isle of Man. Approval from LPs is required and ILP documentation must be updated to meet Irish regulatory requirements in advance of migration taking place. Existing Investment Manager of the ILP will need to be cleared in advance by the Central Bank of Ireland.
(ii) Irish ILPs Re-Domiciling to Other Jurisdictions	The ILP Act also provides for the possibility of an Irish ILP to re-domicile to another "relevant jurisdiction" by way of continuation. Again, "relevant jurisdictions" must be designated by way of statutory instrument but are expected to include the Cayman Islands, the British Virgin Islands, Jersey, Guernsey and the Isle of Man.
(iii) No Irish tax arises on re-domiciliation	Simplification measures exist to ensure that no unintentional Irish tax arises on the re-domiciliation and also to reduce the administrative burden in respect of existing investors in the migrating ILP. The ILP may make a simple declaration within 30 days from the date the ILP re-domiciles to Ireland stating that to the best of its knowledge and belief that at the time of the re-domicile it has no Irish resident LPs (other than such LPs whose name and addresses are set out on the schedule to the declaration). Alternatively, LPs may be able to obtain non-resident declarations from existing investors at the time of the redomicile.

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