

# WILLIAM FRY

## William Fry guide to the Investment Limited Partnership: Ireland's new and improved option for Private Fund Sponsors



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## INVESTMENT LIMITED PARTNERSHIP: SPEED READ

- The ILP is a CBI authorised AIF structure, which may be either a QIAIF or a RIAIF
- With the recent reforms, the ILP, as a tax transparent and classic limited partnership, completes the range of Irish fund structuring options.
- Reforms take effect from 1 February 2020 and include:
  - Flexibility to have an umbrella structure
  - Modern whitelist of limited partner safe harbours
  - Majority approval for LPA amendments
  - Streamlining changes such as for capital withdrawals.
- There are several positive rule changes from the CBI: a GP no longer requires authorisation and customary private fund terms are recognised.
- A QIAIF ILP benefits from speed to market and a predictable and certain pathway to first close.
- With an EU authorised AIFM, the ILP can access the pan-EEA AIFMD marketing passport.
- Ireland has a proven track record as a principal EU alternative funds domicile and a sophisticated ecosystem to support international sponsors.

Ireland has recently modernised its Investment Limited Partnership (“ILP”) fund structure with the aim of providing a flexible and tailored regime able to successfully compete with limited partnership options favoured in other private fund domiciles. This briefing is a high-level overview of the structure, its key features, parties and the establishment process.

## BACKGROUND

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The ILP is a limited partnership vehicle exclusively for use as an alternative investment fund (**AIF**) formed under the Investment Limited Partnerships, Act 1994 (as recently amended) (**ILP Act**). An ILP is subject to authorisation by the Central Bank of Ireland (**CBI**).

While the ILP has been around since 1994, only a handful were established due to some flaws in the original legislative and regulatory regime and a failure to keep pace with developments in limited partnership structures internationally. In recent years, the main AIF vehicle in Ireland has been the ICAV, a specialist corporate fund vehicle, that has, and will continue to have, wide appeal. However, a limited partnership is the customary legal structure in the private assets space (private equity, private credit, real estate, infrastructure etc). A desire to make Ireland a viable competitor domicile to other favoured jurisdictions was a key driver for the recent upgrades.

With the recent reforms to the ILP Act (in tandem with CBI changes to its AIF Rulebook), Ireland now has substantially repurposed the ILP to match up with comparable options in other private fund domiciles. A point to note with the ILP is that it is subject to an additional layer of product regulation as a

CBI authorised AIF. This distinguishes the ILP from unregulated limited partnership options, such as the English private fund limited partnership and the Luxembourg SCSp RAIF, where regulation applies only at the level of the AIFM. However, this dimension should not diminish the overall suitability of the ILP for sponsors in most circumstances.

The additional layer of CBI QIAIF product rules is relatively light and tailored to a sophisticated product and investor base. It does not interfere with achieving traditional private fund terms and economics through the limited partnership agreement (**LPA**) and addressing standard investor side letter requirements. This is even more so the case with recent private fund enhancements to the CBI's rulebook (see below) and the CBI's confirmation that the general partner to the ILP no longer requires specific authorisation.

Indeed, the QIAIF rules can often add value for sponsors and institutional investors alike and can strike an appropriate balance of interests between GP/LPs. These can be a plus in managing and achieving fundraising from regulated channels (e.g. insurers and pension schemes) relative to unregulated structures.

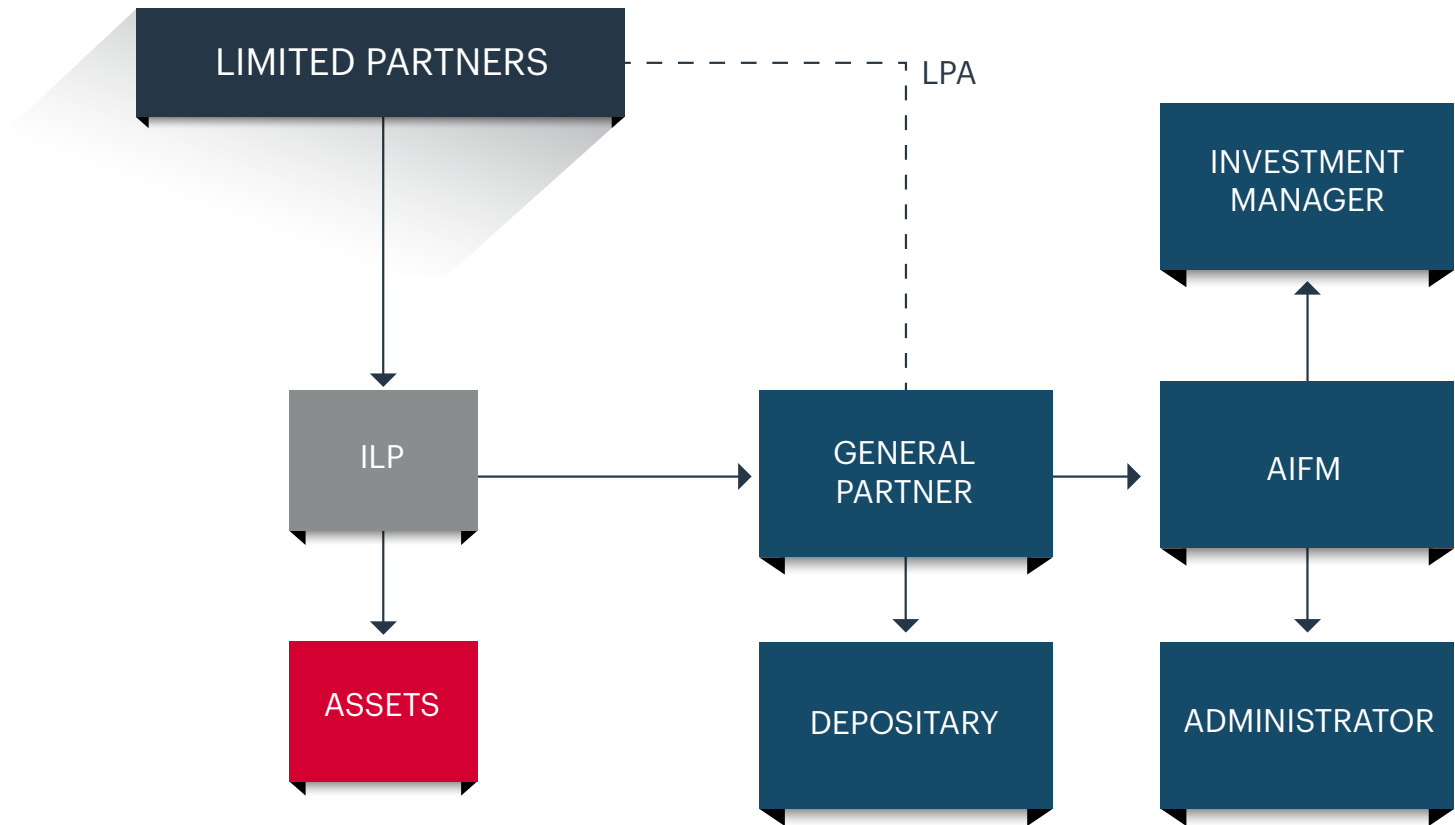
LEGAL FORM AND FEATURES

A helpful aspect of the ILP is its detailed statutory underpinning through the ILP Act. This is a source of legal certainty for GPs and LPs alike. In reforming the ILP Act, a benchmarking approach was taken against limited partnership regimes internationally, which has led to a drawing in of “best in class” style elements found in peer regimes elsewhere.

The legal form and principal features of the ILP include:

- › Constituted by an Irish law governed LPA between at least one general partner (GP) and at least one limited partner and requires CBI authorisation for its establishment.
- › No separate legal personality.
- › The GP is responsible for the 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.
- › Limited partners have the benefit of limited liability up to contributed capital (and outstanding commitments) and the benefit of an extensive and modernised non-exhaustive whitelist of activities permitted which will not cause forfeiture of that liability protection.

- › Must have as its principal business the investment of its funds.
- › Must maintain a registered office and a principal place of business in Ireland.
- › Use the words “ILP” or “investment limited partnership” in its name. The ILP Act permits an ILP to use a translated version of its name outside of Ireland where approved by the CBI.
- › Recognised as tax transparent as a matter of Irish law.
- › Can be formed as a standalone or umbrella structure.
- › In addition to the ILP Act, the provisions of the Partnership Act of 1890 and the rules of equity and of common law apply except where inconsistent with the ILP Act.
- › In most circumstances, it remains a matter of contractual freedom for the GP and LPs to agree the terms governing the business of the partnership.



CENTRAL BANK AUTHORISATION

CBI authorisation of the ILP is available in two product regime variants: a retail alternative investment fund (**RIAIF**) or a qualifying investor alternative investment fund (**QIAIF**). The ILP should have greatest appeal as a QIAIF, targeted at fundraisings from sophisticated investors leveraging the AIFMD EEA marketing passport.

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 introduce some non-material product regulation but these do not impede the flexibility and features typical for private asset limited partnerships:

- there are no material investment restrictions, eligible asset criteria or restrictions on borrowing;

- there is a full array of liquidity options;
- subject to certain mandatory terms, there is sufficient room to achieve standard LPA terms and mechanics; and
- the customary features for closed ended private funds (such as capital drawdowns, carried interest, distribution waterfalls, catch-up payments) are all generally permitted for QIAIFs.

A snapshot of relevant QIAIF requirements is set out at the end of this briefing.

CBI AIF Rulebook Enhancements

The CBI recently consulted on updates to its AIF Rulebook (CP132 – our fuller briefing on which is available [here](#)) for closed ended QIAIFs investing in private equity and other illiquid assets (**CE QIAIFs**). Note this guidance is not limited to ILPs - it extends to all CE QIAIF legal structures (such as the ICAV).

The guidance will permit differentiation by CE QIAIFs between “share classes” (read “interests” for the ILP given the capital account model of the ILP) through the creation of classes which can have:

- › allocation of specific asset returns to particular classes and/or
- › non pro-rata participation in the assets of the CE QIAIF.

ISSUING OTHER THAN AT NAV	Interests can be issued other than at net asset value and without requiring prior approval of the CBI (in recognition of the capital commitment and periodic drawdown of that commitment over the term of the fund).
EXCUSE	Limited partners may be excused by the GP from a proposed investment for policy or legal reasons where agreed in advance (e.g. in a side letter) and subject to receipt of a legal opinion.
EXCLUDE	The GP can exclude a limited partner from participating in an investment where prejudicial to the fund (provided this is disclosed in the LPA and exercised based on a legal opinion).
STAGE INVESTING	The GP, subject to the LPA, may permit partners admitted after first close/ later in the fund life cycle to only participate in and contribute capital to future investments.
CARRY (OR PROMOTE)	Carried interest arrangements and with distribution waterfalls are permitted subject to disclosure in the LPA and/or prospectus.

## PARTIES TO THE STRUCTURE

## GENERAL PARTNER

GP ELIGIBILITY	<p>A body corporate may act as GP. Provided the GP appoints an AIFM, it is not required to be authorised by the CBI. Directors of the GP will need to be approved by the CBI under its fitness and probity regime as pre-approved controlled functions.</p> <p>We anticipate the GP would typically be a newly incorporated Irish private limited company (although the ILP Act does not exclude having a non-body corporate as GP).</p>
DELEGATION	<p>Unless the GP is an authorised AIFM (or a registered AIFM so far as the ILP is sub-threshold), the GP must appoint an AIFM with responsibility for investment management in accordance with AIFMD.</p> <p>The AIFM may delegate to an investment manager (whether within or outside the EU). That entity needs to be cleared (if not already) by the CBI to act as such.</p> <p>(Note, the CBI advance clearance requirement is not applicable for a non-discretionary investment advisor).</p>
DUTIES	<p>In addition to the matters as may be set forth in the LPA, under the ILP Act the GP's responsibilities include:</p> <ul style="list-style-type: none"> <li>• consent to admission of new partners;</li> <li>• keeping proper books and records in relation to the ILP;</li> <li>• maintaining a register of limited partners and the partner capital accounts;</li> <li>• 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 that information to the CBI for its central register;</li> <li>• attending to the dissolution of the ILP.</li> </ul>
EXCULPATION	<p>The GP's exculpation and indemnity rights will be subject to statutory limits under the ILP Act.</p>
CHANGE OF GP	<p>Any change of the GP is subject to CBI approval. The ILP Act expressly facilitates a statutory novation of assets and liabilities on change of the GP.</p>

## LIMITED PARTNERS

WHITELIST	<p>A limited partner'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 the limited partner participates in management but the ILP Act encodes a (non-exhaustive) whitelist of safe harbour activities, including:</p> <ul style="list-style-type: none"> <li>• serving on a limited partner advisory committee;</li> <li>• voting on fund matters (e.g. change of investment objective and policy, LPA changes, GP replacement or admission/withdrawal of limited partners, approval of accounts and resolution of conflicts).</li> </ul>
CAPITAL CONTRIBUTIONS	<p>Capital contributions may be in cash or in kind (but not by way of a loan). Limited partners are only required to contribute capital in the circumstances provided for in the LPA.</p>
WITHDRAWALS	<p>Return of capital is now streamlined. Subject to the LPA, capital can be withdrawn once the ILP has a positive net asset value (and limited partners will have no continuing claw-back risk).</p>
LP CATEGORIES	<p>The ILP Act allows for different categories of limited partners within an ILP, subject to the terms of the LPA.</p>
DEFAULTS	<p>Where limited partners default under the LPA (e.g. failure to pay capital calls), the ILP Act confirms that the common remedies (such as forfeiture, forced sale or subordination) are not penal for the purposes of enforceability under Irish law.</p>
LPA AMENDMENTS	<p>With the recent reforms, the consent of all limited partners is no longer necessary for LPA amendments. Changes can now be made, subject to the LPA terms, with majority approval. Certain non-prejudicial changes can be made with depositary and GP approval.</p> <p>CBI approval (which generally takes one day) is required for LPA amendments.</p>
REGISTER	<p>The default position, unless varied in the LPA, is that the register of limited partners 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).</p>
INFORMATION RIGHTS	<p>The ILP Act confers certain information rights on the limited partners (in addition to rights under the AIFMD and the CBI's AIF Rulebook). Subject to the LPA, limited partners (or their agents) may inspect and enquire to the general partner regarding the business of the partnership.</p>



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## AIFM AND OTHER SERVICE PROVIDERS

Since the ILP is an AIF, it needs an alternative investment fund manager (AIFM). While the AIFM may act as GP, the personal liability dimension for the GP would make this unusual.

Having an EU authorised AIFM will give access to the AIFM marketing passport for ease of fundraising from professional investors throughout the EEA. This is an edge over offshore/non-EU funds and the ILP can work well as part of a global fund platform. This could be as a parallel fund to the offshore fund for EEA investors. It could also be structured so that the ILP is the master fund (with a blocker style entity as feeder for US tax-exempt investors).

An ILP, like other QIAIFs, will need to have additional service providers such as:

- an authorised Irish depositary (per AIFMD)
- a CBI authorised fund administrator (save where this function is retained by the AIFM) and
- an auditor.

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## UMBRELLA FUND STRUCTURE

With the reforms, an ILP can now be established as an umbrella type structure. This means it can have multiple sub-funds with statutory ringfencing of assets and liabilities. This adds a useful dimension for sponsors compared to the standalone model typical for limited partnerships.

The ability to add new sub-funds could be valuable for structuring solutions (e.g. for accommodating co-investment, separating different investor types or liquidity profiles). It will also allow sponsors to achieve operational efficiencies with follow-on funds or new strategies by adding new sub-funds on a single platform with existing infrastructure.

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## MIGRATION OF LIMITED PARTNERSHIPS

The ILP Act contains provisions which will facilitate migration by continuation of limited partnerships established in other jurisdictions to Ireland (and vice versa).

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## IRISH TAX REGIME

The ILP is treated as 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.

## ESTABLISHING A QIAIF ILP

ILPs authorised as QIAIFs should be able to avail of the CBI's fast track approval procedure in most circumstances. So, while CBI authorisation is required for establishing the ILP, this should be achievable within one business day of completing the filing with the CBI.

Access to the fast track authorisation is subject to all parties to the structure having been previously approved/cleared by the CBI.

The pre-formation stage items, depending on the circumstances, may take in the range of 3-6 weeks. For follow on sub-funds in an umbrella ILP, there should be timing efficiencies to achieving authorisation.

Below is a high-level process flow for the typical sequencing from pre-formation to first close of a new standalone closed-ended ILP structure. The timeline to first close is usually driven by GP/LP negotiations.



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|---|--|--|
| <ul style="list-style-type: none"> <li>› Incorporate GP</li> <li>› CBI approval of GP directors</li> <li>› Prepare prospectus ("OM"), LPA and material contracts (in line with CBI requirements).</li> <li>› Eligible entities to act as AIFM, depositary and administrator to be identified for appointment and terms negotiated.</li> <li>› If applicable, complete CBI clearance application for any investment manager (N/A for an investment adviser).</li> <li>› <b>Note:</b> "pre-marketing" filing by the AIFM may be required once the Cross-Border Distribution Directive goes live in August this year.</li> </ul> | <ul style="list-style-type: none"> <li>› CBI authorisation letter issues within one business day of filing by GP of:               <ul style="list-style-type: none"> <li>- LPA executed between GP and initial LP (e.g. proposed carry LP).</li> <li>- Final OM and executed material contracts with AIFM, any investment manager/ adviser, depositary and administrator.</li> <li>- Completed CBI application materials.</li> </ul> </li> <li>› ILP is then established for purposes of the ILP Act.</li> <li>› AIFM undertakes AIFMD marketing notifications (usually processed by CBI within 5-10 business days).</li> </ul> | <ul style="list-style-type: none"> <li>› To the extent negotiations with first close investors result in LPA changes, the amended and restated LPA will need to be filed with the CBI for noting and approval.</li> <li>› If applicable, initial LP withdraws as first close partners are admitted.</li> <li>› Subscription agreements and any investor side letters would do not need CBI filing or approval.</li> </ul> <p><i>*Note, the ILP could also be open-ended. It may also be possible to have first close co-ordinated and timed to be on/ shortly after CBI authorisation.</i></p> |
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SNAPSHOT OF KEY RULES FOR A QIAIF

QUALIFYING INVESTORS	<p>QIAIF ILPs are open to professional or well-informed investors who are:</p> <ul style="list-style-type: none"><li>• self-certified in writing as being informed investors;</li><li>• MiFID professional clients; or</li><li>• appraised by an EU regulated institution as having an appropriate level of expertise, knowledge and experience.</li></ul>
MINIMUM INVESTMENT	<p>A limited partner needs to make a minimum capital commitment of at least €100,000 (or equivalent) to the ILP. The GP may exempt the management team from this minimum capital commitment.</p>
INVESTMENT RESTRICTIONS	<p>No material investment restrictions or eligible asset rules apply. To the extent an ILP directly originates loans (i.e. a loan-origination QIAIF), it will be subject to additional investment restrictions and specific CBI requirements.</p> <p>An ILP is not subject to any mandatory risk spreading obligations and therefore can hold a single asset/highly concentrated portfolio.</p>
BORROWING/ LEVERAGE	<p>No limits on borrowing or leverage apply subject to the limits disclosed in the prospectus.</p>
LIQUIDITY	<p>QIAIFs may be open-ended, limited liquidity or closed-ended. In the case of a closed-ended QIAIF, the ILP must set out the term in the fund documents.</p> <p>Where redemptions are permitted, there is a full range of liquidity management tools including side pocket style arrangements, gating, notice periods, liquidity fees, in-specie redemptions etc.</p> <p>An umbrella ILP will be able to establish sub-funds with different liquidity profiles.</p>
FUND CHANGES	<p>CBI approval/noting required for changes to the prospectus and constitutional document and material contracts.</p> <p>Certain changes, such as a change to the investment objective or fee increases beyond disclosed limits, require investor approval.</p>
DOWNSTREAM STRUCTURING	<p>A QIAIF is generally able to establish/invest through portfolio holding company structures subject to meeting disclosure and some other CBI requirements.</p>
TRANSPARENCY	<p>QIAIF must publish a prospectus addressing minimum disclosure requirements in AIFMD and the CBI’s AIF Rulebook. It will also need to produce an annual report each financial year and comply with periodic CBI reporting obligations.</p>

HOW WILLIAM FRY CAN HELP

We are 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. A strength of our offering is the depth and quality of our experience in the structuring, formation and ongoing operation of private fund structures. We routinely advise Irish and international sponsors at a fund and deal level and often act on the investor side for early close investments in Irish and overseas private funds.

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