# Irish Investment Limited Partnership Amendment Bill

## Introduction

On 21 September 2020, the Irish government published the Investment Limited Partnerships (Amendment) Bill 2020 (the "ILP Bill"). The ILP Bill will amend the Investment Limited Partnerships Act, 1994, which governs the establishment and operation of Irish investment limited partnerships ("ILPs"). The ILP Bill has commenced the legislative process. Before entering into law, the ILP Bill will be subject to various stages of review and approval by the Irish parliament, but it is hoped that the legislation will be approved in the coming months.

ILPs are a form of common law partnership structure under which it is possible for sophisticated investors to hold funds in a variety of assets through a limited partnership agreement with other investors. ILPs, depending on how they are created, have no investment or borrowing restrictions. An ILP is created by contract between the general partner(s) ("GPs") (ie, the entity or entities managing the partnership, which may include an AIFM) and one or more investors who participate as limited partner(s) ("LPs"). 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.

The ILP Bill aims to modernise the structure of the ILP and bring it in line with comparable partnership vehicles in other leading jurisdictions. The ILP Bill aims to make Irish ILPs the vehicle of choice in Europe for private equity, private debt, venture capital and real asset investment strategies such as real estate, infrastructure and energy.

## Key Changes

*Umbrella Structure*
The ILP Bill introduces the possibility of establishing "umbrella" ILPs that are divided into sub-funds with segregated liability. This change will lead to alignment with the structure of more widely used regulated fund structures in Ireland – ICAVs and public limited companies, which can already be established as umbrella funds. This enhancement facilitates the possibility of managing separate portfolios of assets under an ILP umbrella.

*Liability of Limited Partners*
Under the traditional ILP model, an LP loses its limited liability where it becomes involved in the management of an ILP. The ILP Bill clarifies and extends protections to LPs which allows them to undertake certain actions without being deemed to take part in the management of ILPs (e.g., sitting on advisory committees and voting on changes to the limited partnership agreement ("LPA")). Under this limited liability, LPs are only liable for the amount of capital contributed or undertaken to be contributed to the ILP.

*Amendments to the LPA*
The ILP Bill removes the requirement for all LPs to approve an amendment to the LPA. Instead such an amendment may require approval by a majority of the GPs and a majority of LPs. The ILP Bill also allows for certain amendments without LP approval where the depositary certifies that the changes do not prejudice the interests of LPs.. The LPA itself can refer to what constitutes a "majority of LPs" (e.g., a majority by value, by number or by class).

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*Capital Contributions / Withdrawals*
The ILP Bill streamlines the process for the contribution and withdrawal of capital to and from ILPs and aligns the process with that applicable to other Irish fund vehicles and partnership structures in other jurisdictions.

*Beneficial Ownership*
The ILP Bill introduces requirements around beneficial ownership to ILPs and common contractual funds ("CCFs"). These requirements are comparable to those already applicable to corporate funds and funds established as unit trusts. The ILP Bill will require the GP of an ILP and the management company of a CCF to establish and maintain a register of beneficial ownership and to submit that information to the Central Bank of Ireland ("Central Bank") for inclusion on the Central Bank's central register of beneficial ownership of certain financial vehicles.

ILPs and CCFs in existence at the date of commencement of the provisions will have six months to file their beneficial ownership information on the Central Bank's central register. ILPs and CCFs created after the provisions come into force will have six months from the date of their formation to file their beneficial ownership information on the Central Bank's central register.

*ICAV Act*
The ILP Bill will also make technical amendments to the ICAV Act to align the ICAV Act with certain provisions of the Companies Act 2014 including, provisions relating to powers of attorney and intra-group loans and other transactions.

*Further Changes*
Other changes introduced by the ILP Bill include:

- The power to register an alternative foreign name in order to facilitate an ILP operating in a non-English speaking jurisdiction to have official recognition of a translated name in that jurisdiction.
- Providing for the migration-in and migration-out of Ireland of ILPs similar to the process in place under the ICAV Act.
- Providing greater ability for parties to agree specific terms that will apply in their LPA.

Separately, the Central Bank is expected to consult on changes to its AIF rulebook relating to the ILP Bill. These changes are expected to impact AIFs that invest in private equity, private credit and other private asset investment strategies. The consultation will be of interest to those who are considering using the ILP structure.

## KB Associates' Services

KB Associates provides a range of services to investment funds including:

- The provision of UCITS management company/AIFM services
- The provision of designated persons to perform UCITS business plan/AIFMD programme of activity functions.

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