Ireland's New Closed Ended Private Funds Structure

The Investment Limited Partnership (ILP)

irish funds

Contents

Why Ireland

- With dry powder reaching unprecedented heights, the expansion of private markets represents a significant shift in the investment landscape and could provide a springboard for economic recovery, especially as bank lending restrictions increase demand for alternative sources of funding.
- Private equity investment could help turn around businesses in sectors hardest-hit by COVID-19 and address the growing importance of ESG and digital engagement with investors.
- Regulation put in place after the global financial crisis of 2008 to 2009 has increased the cost differential between regulated and unregulated capital, significantly boosting the role of non-bank capital providers. This would create an opportunity for private credit funds to fill the breach by helping finance businesses with strong growth potential but limited access to mainstream funding.
- Assets under Management are projected to grow by 5.6%* on a CAGR basis to 2025 with annual growth rates in Ireland of 10.76%** in the same period. Alternatives and particularly private equity/debt, infrastructure and other sustainable strategies will be key to this growth. Ireland as a domicile, and with the introduction of its new closed ended funds structure known as the ILP (Investment Limited Partnership), provide the ideal solution for Asian Asset Managers for their private funds which can be sold globally.

Ireland is:

- Home to 20 of the world's top 25 financial services companies
- The only native English speaking country in the Eurozone providing access to a European market of 500 million consumers, one of the largest markets in the world.
- Highly educated: it is 1st in the EU and 4th globally with the highest proportion of 25-34 year olds with a third level qualification.
- The location of choice for:
  - > 250 of the world's leading financial firms - including half of the world's top 50 banks
  - > 17 of top 20 global asset managers have Irish-domiciled funds
  - > All of the top 10 global software companies and the top 10 'born-on-the-Internet' companies
  - > 14 of top 15 global aviation leasing companies

Sources: Enterprise Ireland 2020 / Department of Finance - Ireland for Finance 2025 publication, 2019 / Department of Education and Skills - Education at a Glance – OECD Indicators 2019

6.3%* of worldwide investment fund assets are domiciled in Ireland making Ireland the third target centre globally

1,027** global fund managers have their funds domiciled or serviced in Ireland.

* source EFAMA worldwide fund statistics Q2 2021

** source Monterey Ireland Fund Report 2020

* PwC report reveals Irish AWM industry to grow 10.76% annually to 2025

** PwC report reveals Irish AWM industry to grow 10.76% annually to 2025

Why Ireland – The Facts

1,027
Fund Promoters

566
Promoters of Irish Domiciled Funds

€5.4
Trillion Total AUA

€3.3
Trillion Irish Domiciled NAV

Over
16,000
Employed

Distribution to over
90 Countries

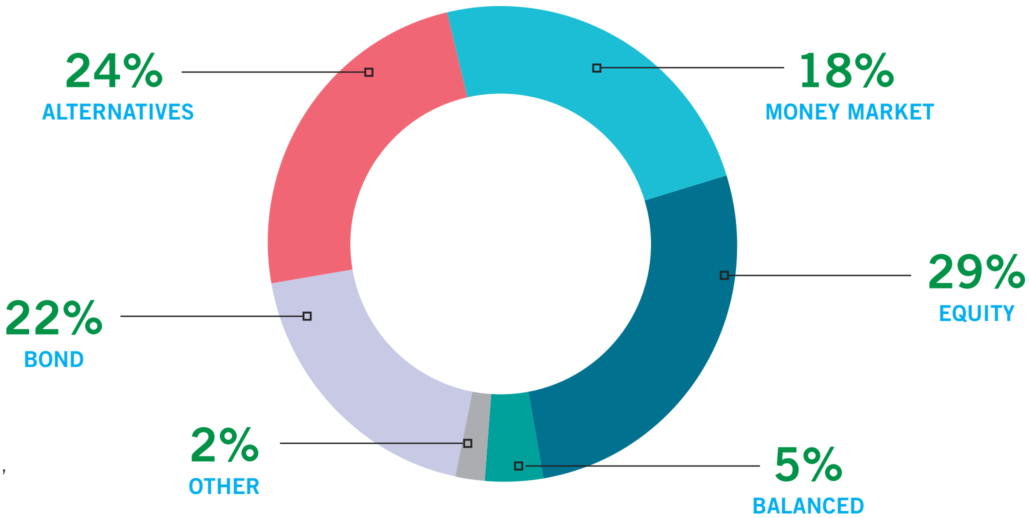
14,498
Total Funds

6,536
Non Domiciled

7,962
Irish Domiciled

SOURCE: Central Bank of Ireland, Monterey Insight Ireland Survey 2020 and Irish Funds (Net assets and number of funds valid as of December 2020)

Irish Domiciled Funds / Breakdown by type



SOURCE:
Central Bank of Ireland,
December 2020

Following the recent overhaul of the Investment Limited Partnerships Act, 1994 (the "ILP Act") and amendments made to the Central Bank of Ireland's AIF Rulebook, the Irish investment limited partnership (the "ILP") is expected to become the fund structure of choice for many Asian investment managers, particularly those in the private equity, private debt, private credit, infrastructure and real assets sectors, and those with a longer term sustainable finance focus.

In this publication we highlight some of the key features of the ILP and the Central Bank of Ireland authorisation process for Asian asset managers.

Additional details can be and other ILP related briefings are available at www.irishfunds.ie

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 Alternative Investment Fund Manager (AIFM), an ILP can be passported to market to professional investors in the EU. It can also be registered for sale in many of the world's leading investor markets subject to compliance with local securities laws.
  - Inward/outward migration capacity
- Real Assets Depositary option available
- Can be an umbrella with segregated liability between sub-funds

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 of Ireland pursuant to the ILP Act. Thereafter, it is subject to both the regulation and supervision of the Central Bank of Ireland.

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

QIAIFs are restricted to investors who meet either the MiFID II professional client criteria or other specified qualifying criteria 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.

WHAT DOES AN ILP LOOK LIKE?

Like limited partnerships in most other jurisdictions, the ILP does not have a 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"**).

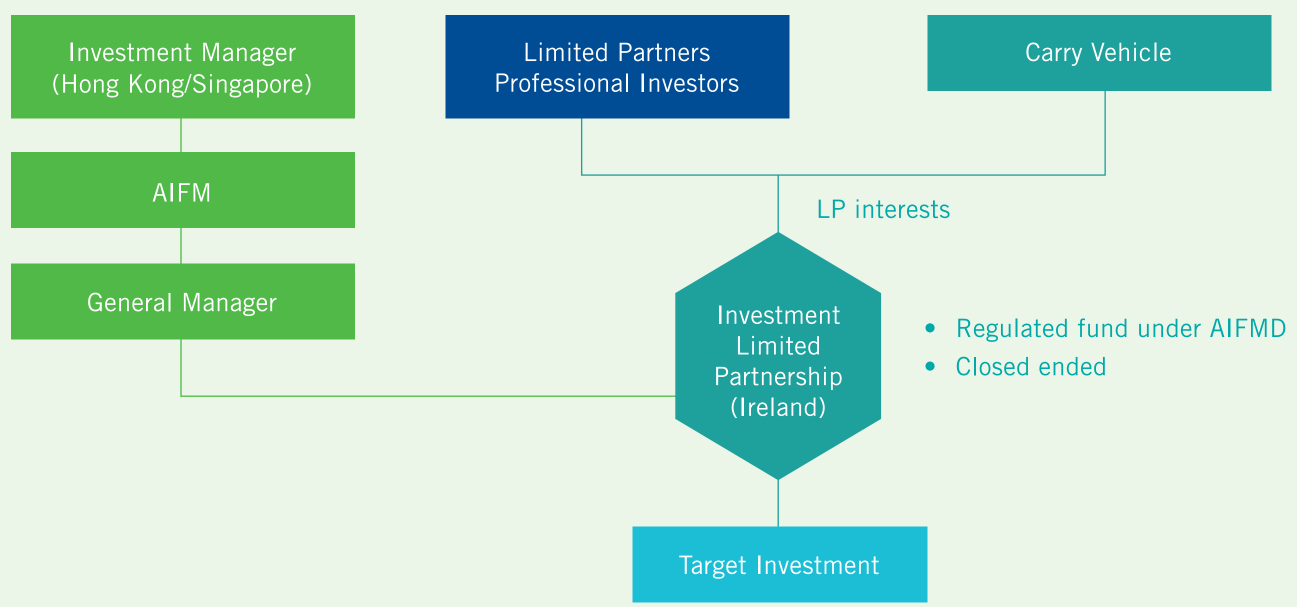
The GP is charged with and is responsible for the management, control and operation of the ILP and of its investment activities, and has unlimited liability for the ILP's debts and obligations of the partnership.

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.

We have also set out further information on the parties appointed to an ILP below.

ILP Structure Chart



TYPICAL PRIVATE EQUITY AND REAL ASSETS FUNDS' FEATURES

The ILP Act and the recent guidance published by the Central Bank of Ireland 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

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 of Ireland, will be subject to its rules, including any product specific type rules, as set down currently in its AIF Rulebook. Should you need to seek advice on these rule any of the legal firms who are members of Irish Funds will be happy to advise. **https://www.irishfunds.ie/about/members/category/legal-advisors#focus**

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 to 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 can be obtained from the Tax adviser members of Irish Funds.

https://www.irishfunds.ie/about/members/category/audit-tax-advisors#focus

GP, AIFM, Investment Manager and Depositary

As a common law partnership with no separate legal personality, the ILP requires a GP which is typically established as an Irish limited liability body corporate. Due to the unlimited liability of a GP for the debts and obligations of an ILP, the GP usually will act in respect of one ILP only and is a separate legal entity to the AIFM. The GP is not required to be authorised by the Central Bank of Ireland (given that a regulated AIFM is being appointed) and the directors are instead subject to the Central Bank of Ireland's fitness and probity regime.

The GP will appoint the AIFM to the ILP and the AIFM will be responsible for compliance with AIFMD. The AIFM can market an ILP throughout the EU to professional investors using the AIFMD passport. Given the substance requirements and timing constraints around establishing an AIFM, Asian managers looking to establish an ILP typically use a hosted AIFM solution.

The AIFM will delegate portfolio management to the Investment Manager (usually the fund sponsor) which must be sufficiently regulated in its home state. Such an Investment Manager will either be an EU MiFID authorised entity or a regulated Non-EU entity which has obtained Central Bank of Ireland 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.

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.
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.
Auditor	Local auditor required

* 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.

How does the ILP compare to Limited Partnership structures available in other jurisdictions?

Increased uniform regulation and tax transparency has made distinguishing between private equity specialist centres more nuanced. Ireland's enhanced ILP regime ensures that it compares favourably with other global domiciles for structuring partnerships and remains a leader in this space.

The table below sets out key features of European, Cayman and Asian partnerships and demonstrates the increased commonalities that now exist with a key distinguishing feature being the ability to access European investors. Additional features such as tax, governance, supporting infrastructure and geography also play an essential role.

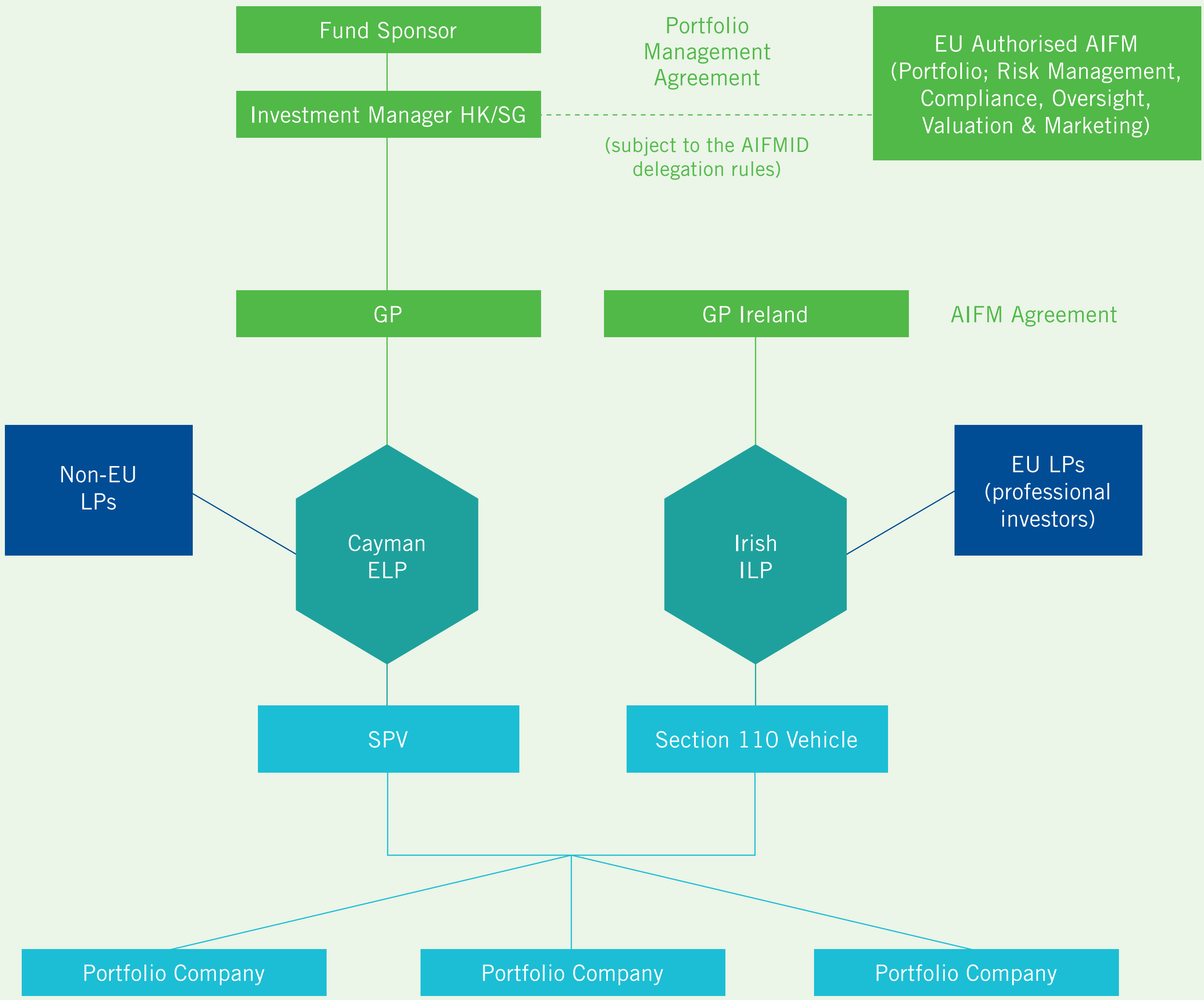
Jurisdictional Comparison

	Ireland	Luxembourg		Cayman Islands	Hong Kong	Singapore
Vehicle	Investment Limited Partnership	SCS / SCSp	RAIF (wrapper) (can use corporates too)	Exempted Limited Partnership	Limited Partnership Fund	Limited Partnership
Regulated	Yes (QIAIF)	No	Fund – no AIFM – yes	Yes (If definition of 'Private Fund' is satisfied)	No (Not SFC authorised)	No (Not MAS authorised)
EEA AIFM Required	Yes	No	Yes	No	No	No
Pan-EEA Marketing Passport	Yes	Yes (provided a regulated AIFM is appointed)	Yes	No	No	No
Required to appoint a third-party custodian	Yes	No	Yes	Yes (although, may notify CIMA that it is neither practical nor proportionate)	Yes (although may self-custody)	No (exemption available)
Co-location of Investment Manager and partnership	Not required	Not required	Not required	Not required	Required	Required
Migration	Yes (In/Out)	Yes	Yes	Yes (In/Out)	No	No
Separate Legal Personality	No	SCS – Yes SCSp – No	SCS – Yes SCSp – No	No	No	No

Parallel Partnership Structures

In order to achieve global scale, parallel partnership structures are becoming more common. Parallel structures enable private equity firms to gain access to LPs based in numerous jurisdictions, ensure that LPs are being offered legal structures they are familiar with and enables them to run one pool of assets. The below structure chart sets out the typical form of a parallel arrangement. Master Feeder structures can be put in place using an ILP noting AIFMD requirements must be complied with.

Parallel PE Structures



Dublin

Ashford House, 18-22 Tara Street,
Dublin 2, D02 VX67, Ireland.

T: +353 (0) 1 675 3200
F: +353 (0)1 675 3210
E: info@irishfunds.ie

www.irishfunds.ie

October 2021

Brussels

6th Floor,
Square de Meêus 37,
1000,
Brussels.

irish funds