Ireland ILP

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The appeal of a regulated partnership

Interview with Barry O'Connor

Regulation has been at the forefront of investors' minds ever since the global financial crisis in 2008. In the current environment, the need for oversight and monitoring is even more necessary as the industry navigates uncharted waters. However, this requirement for more robust supervision needs to be tempered with flexibility.

Ireland's amended Investment Limited Partnership (ILP) Act, which came into effect on 1 February, strikes a balance between regulation and broad investment capabilities. Barry O'Connor, partner in the Asset Management and Investment Funds Group at Matheson, explains: "Within the ILP and in contrast to similar vehicles in other jurisdictions the fund itself is regulated, which makes a significant difference to investors. This vehicle will sit within Ireland's existing Qualifying Investor Alternative Investment Fund (QIAIF) regulatory regime, which has been around since the 1990s and which has been incredibly successful. The QIAIF regime offers features that managers appreciate – like the speed to market – but it also has controls over governance aspects that are absent in unregulated vehicles and which are key to investors. Until now, the material gap in the QIAIF regime has been the lack of a suitable partnership vehicle and the enhanced ILP addresses that."

Under the QIAIF regime, the Central Bank of Ireland doesn't review the documentation in the vast majority of cases. Rather, it relies on confirmations from the lawyers. This means that, if all the documents and service providers are in order, a manager can make a filing with the Central Bank by 5pm one day, and have their fund approved the day after.

"Having a regulated fund in this space come to market in this kind of timeframe is very attractive to managers. The QIAIF regime also doesn't impose many limits on what the fund can invest in or the amount of leverage which can be applied. This is something which fund managers and investors are keen on. Therefore, this results in a vehicle which can invest in a broad range of asset classes and which can be brought to market quickly," O'Connor notes.

What the QIAIF regime does regulate are issues like monitoring and independent oversight, conflicts of interest, conduct, reporting, fitness and probity of directors etc. "The regulatory regime provides several protections for investors without any of the elements which could cause a drag on the fund or stop the managers from doing what they want to do," O'Connor adds.

Greater on-shoring

Traditionally, investors largely got exposure to these alternative asset classes through unregulated funds. However, as more investors have been on-shoring their investments, motivated by tax implications and other factors, having a regulated alternative is particularly attractive.

"The appetite for more regulation has become a long-running theme in the industry. In addition to the current pandemic, the 2008 financial crisis and scandals like the Bernie Madoff fraud case caused investors to feel a bit lost. The investor sentiment was then complemented by the introduction of the Alternative Investment Fund Managers Directive, which drove managers and their clients towards regulated products. Further, for some investors, especially in the institutional and pension space, the need for regulated funds was then built into their mandates."

"This direction of travel towards regulated funds has been sustained but it's now being pushed along by tax issues as well. Having the Cayman Islands going on and off the European Union blacklist has left some investors wary of investing in Cayman funds because of the worry that the jurisdiction will be blacklisted again," O'Connor outlines.

Ireland has a strong track record in providing regulated alternative funds. O'Connor details: "Back when the focus on regulation began to ramp up, Ireland had a fantastic head start. We were one of the few, if not the only, jurisdictions in the world that offered hedge funds that were regulated."

Final piece of the puzzle

The ILP has completed Ireland's offer as a financial jurisdiction. The amended legislation provides the last piece of the puzzle, allowing Ireland to offer a suitable vehicle for all strategies and investor types.

"The main benefit of this law is not any individual feature of the structure itself, but rather the fact that Ireland now has a partnership that works. Before this law was enacted, managers had a hard reason not to come to Ireland when setting up partnerships – we simply didn't have the structure available. Now this has changed and we're on a level playing field with other jurisdictions like Luxembourg," O'Connor comments.

He believes the initial appetite for the structure will be from managers who don't already have a European footprint: "There is a lot more interest coming from managers who are coming to Europe for the first time and therefore with a completely clean slate–primarily from the US. This is because those who already have Luxembourg partnerships will be less likely to move existing funds or to use the ILP for the next vintage of an existing fund. However, those managers will consider the ILP as an option when looking to set up a completely new fund."

In O'Connor's view, the growth of the ILP will start off as a trickle which may then become a deluge: "I think it will be a slow burner initially but once it gets going, it could be very successful. For years, managers have been saying to us that "if only" Ireland had a suitable partnership, they would have set their fund up here." He says Matheson gave 52 presentations to clients and prospective clients between the middle of January and the end of February, which is indicative of the appetite for this structure.

Now that Ireland is on a level playing field in terms of the structures it offers, the jurisdiction can focus on its differentiating factors. O'Connor says: "Now that we're at the table and can have these conversations, we can highlight things that managers have said (all else being equal) attract them to Ireland, including that English is our first language and Ireland is a common law jurisdiction, which is familiar to managers outside of Europe. Also, other cultural factors come into play, such as service standards. We bring a solutions-driven mind-set rather than a more administrative approach which people might perceive is offered elsewhere." ■

Barry O'Connor
Partner, Matheson

Barry O'Connor is a partner in the Asset Management and Investment Funds Group at Matheson. He practices financial services law and advises many of the world's leading financial institutions, investment banks, asset management companies, broker-dealers and corporations carrying on business through Irish domiciled investment funds (ICAVs, investment companies, unit trusts, CCFs and ILPs) and Irish domiciled management companies (UCITS and AIFMs).