

Question 1. What are the benefits of limited partnerships for the Irish economy?

The IVCA welcomes the opportunity to respond to this Review of the Limited Partnership Act 1907. Limited Partnerships (LP's) are the legal basis of Ireland's venture capital and private equity industry, allowing venture capital & private equity funds to create limited partnership fund vehicles to raise and distribute funding. In the last 10 years alone this has resulted in over 1,550 Irish SMEs raising venture capital of €5.5bn and created over 20,000 jobs.

Question 2. Given developments in the law governing business activity since 1907 is there a continued need for limited partnerships? Please set out any reasons or evidence for your opinion.

LPs are commonly found sitting under regulated fund structures. Promoters of Irish regulated funds often use LPs as they are treated as "look through" entities from a direct tax perspective. The partners of LPs are instead subject to tax on their profit share, as provided for in the LP deed.

One benefit of structuring funds as LPs rather than other vehicles is that the liability of the underlying investors is limited to their capital investment in the fund. This gives protection and provides comfort that as an investor they would not be liable for reckless actions or debts in underlying portfolio companies.

In the case of venture capital, most venture capital investments are in a pooled format i.e. a Venture Capital Fund that is usually structured as a Limited Partnership where several investors, in order to spread their risk, combine their investments into one large fund that invests in many different startup companies. In Ireland the average number of LPs in each fund is 10-20 partners and the term of the partnership is typically 10 years.

The current limited partnership legislation has allowed an industry structure to develop which is highly dependent on the 1907 Limited

Partnerships Act. We believe that it would be difficult to replace the benefits of LP's as a pooled investment vehicle with any other existing corporate structure.

Question 3. Please set out your views on the possible reasons why there has been an increase in limited partnership registrations since the end of 2015.

The UK has long been the European if not global center of the investment funds industry. Since 2016 it has become less attractive due to Brexit-related uncertainty. Since 2016 it has offered the need for full AIFMD compliance with no certainty that the benefits of AIFMD will continue to apply. There is evidence that new funds wishing to take advantage of AIFMD are generally going to EU centers like Luxembourg, or Dublin for their LP based funds structures. We believe that this may account for some of the increase in Limited Partnerships since the Brexit vote in 2016.

Additionally, the economic rebound since the 2008 crash means that exiting managers are raising funds much quicker as the performance cycle has come good and positive returns are being generated, including in old vintage funds, and this is attracting investors. This may also account for the increasing the pace of registrations for fund managers who had existing LPs already registered in Ireland.

Question 4. Please set out your views on whether limited partnerships should be required to use the term "Limited Partnership" in the business name.

We do not envisage any difficulty with this requirement. We would suggest that using the abbreviation LP could be helpful for long named funds. Here is precedence for this with Ltd (limited) and DAC (designated activity company) already in use by companies.

Question 5. Please set out your views on whether limited partnerships should be required to maintain a principal place of business and a registered office in the State.

We support the proposal that a limited partnership be required to have an Irish address but do not support restrictions on maintaining a principal place of business in Ireland. Businesses are by their nature becoming increasingly international, and may require flexibility to manage business across jurisdictions. An appropriate solution could be an Irish address for the service of documents this would allow authorities a route to contacting the limited partnership.

Question 6. Please set out your views on whether limited partnerships should be required to make an annual return to the Registrar similar to obligations on companies.

A limited partnership differs from a company in that it (as opposed to its limited partners) does not benefit from limited liability, and must have a general partner whose liability for the debts and obligations of the partnership is unlimited. This puts third parties in a legally stronger position in the event of claim against a limited partnership than against a company, which explains the historic absence of a concomitant liability for limited partnerships to file accounts in public. We believe that this is an adequate level of protection for third parties and fits well with established corporate law principles.

LPs are also look through vehicles for tax purposes so the underlying investors tax affairs are in their own hands. This ensures there are no complex tax issues to deal with when forming a fund. Additionally, the financial information that may be of interest to tax authorities is already available through limited partners' individual tax returns.

As regards ensuring transparency for limited partners, venture capital and private equity financial reporting has developed to a sophisticated level to satisfy the requirements of institutional and professional investors. The General Partner or manager is able to agree on a contractual basis to provide financial statements containing comprehensive financial information that is meaningful to an often-international limited partner base. Replacing this with a requirement to file accounts prepared in accordance with the Companies Act would end this flexibility.

Finally, the operations of the Irish Venture Capital and Private Equity industry require that as alternative investment funds they require an AIFM. This requirement means that there are already significant financial record keeping and transparency obligations in place for Irish LP's in the VC & PE industries.

Question 7. Please set out your views on how the annual return should be made and who should be responsible for making it.

Please see response to question 6.

Question 8. Please set out your views on whether all limited partnerships should be required to file financial statements.

Please see response to question 6.

Question 9. What are your views on giving the Registrar powers to remove and strike-off limited partnerships from the register?

Question 10. What factors do you think should be considered in removing or striking-off limited partnerships from the register?

We can see benefits in having a mechanism to allow the Registrar to strike off unresponsive partnerships.

However, if there were a strike-off procedure, there would need to be certainty that the striking-off of a limited partnership would not result in the creation of a general partnership and/or the loss of limited liability for limited partners.

A key requirement of an investor in an institutional investor fund is that it has limited liability for the debts and liabilities of the partnership. Losing limited liability would have a material adverse impact on the Limited Partner – they would not just be liable for their share of the Partnership, but may potentially have liability, on an uncapped basis, for every other investor's share of the partnership. Losing limited liability is simply not a risk that institutional investors would be prepared to take. If

there were to be a material risk that a fund investor could lose its limited liability for a reason that is outside their control, then they would not be prepared to invest in that vehicle.

Question 11. Please provide any other comments you wish to inform the development and direction of policy on limited partnership law.

We welcome this review of the 1907 Act and which we hope may modernise and bring improvements to the LP legal framework. Additionally, we believe that with some updates, there would likely be considerably more interest in UK and Western European VC and PE funds registering Irish LPs.

In particular the following changes should be considered:

Increasing or lifting the restriction on number of LPs you can admit to a partnership. Currently, can mean there is a need for parallel partnerships, which increases cost, and means reporting can become opaque to investors and consequently undesirable.

Ireland stands in isolation from many other jurisdictions in not specifying any safe harbors for LP involvement in management without the loss of limited liability, and also in maintaining a restriction on not repaying LP capital prior to termination. It would be useful to clarify that one limited partnership may become a feeder into another limited partnership. For instance, UK legislation relating to this was updated in the 1970s. As Ireland has not proceeded with similar updates, there is a perceived lack of clarity and this has been a barrier for funds wishing to locate in Ireland.

The IVCA is grateful for the opportunity to contribute to this consultation, and we look forward to discussing these issues further as the process evolves.