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**Company Law: Accounting and Audit  
Policy**

**Department of Business, Enterprise and  
Innovation (“DBEI”)**

**By Email: [orla.obrien@dbei.gov.ie](mailto:orla.obrien@dbei.gov.ie)**

**Public Consultation on the Limited Partnerships Act 1907 (the “Consultation”)**

Dear Sir/Madam

Simmons & Simmons (the “Firm”) is an international law firm headquartered in London, with 23 offices globally, including Dublin. The Firm focusses on four key sectors, one of which is asset management & investment funds (“AMIF”).

In keeping with Ireland’s pre-eminent position as an international funds domicile, the Dublin office has a strong focus on the AMIF sector and we very much welcome the opportunity to respond to the Consultation and to suggest amendments to the Limited Partnerships Act 1907 (the “Act”).

The Firm has vast experience of a wide variety of investment structures across every major jurisdiction. As such, our responses focusses on the use of the limited partnership as an investment fund structure, rather than the broader use of such structures, as we expect other respondents with specific experience in such sectors will address.

As the DBEI will be aware, Ireland is a leading domicile for investment funds. Historically investment funds domiciled in Ireland have, for the most part, focussed on liquid assets and provided investors with the ability to subscribe and redeem periodically throughout the life of the fund (“Open-Ended Funds”). Although Ireland offers a range of investment vehicles which can facilitate the full range of investment types, common law limited partnerships are the default legal structure globally for investment funds investing in assets which are not publicly tradeable, for example shares in private companies, private debt, real estate, venture capital and certain other physical or “real” assets. Such investment funds do not ordinarily allow for investors to redeem (i.e withdraw capital) during the lifetime of the investment fund and investors in such funds commit capital for a fixed term, with the terms of such commitment being outlined in the limited partnership agreement constituting the limited partnership and/or a separate offering document. Investment funds of this nature are not typically made available to retail investors and ordinarily are aimed at institutional investors, professional investors and/or high net worth individuals and hereinafter referred to as “Closed-Ended Funds”.

Common law limited partnerships can be established in Ireland as a limited partnership (“1907 LPs”) pursuant to the Act or as an investment limited partnership (“ILP”) pursuant to the Investment Limited Partnership Act 1994 (“ILP Act”).



The prevailing industry view is that both the Act and the ILP Act require significant amendment before they can be considered to provide best in class legal structures for Closed-Ended Funds. In this regard, the Central Bank of Ireland (“CBI”) and the Department of Finance are currently liaising with the Irish Funds industry with respect to amendments to the ILP Act. In addition, the CBI has issued a notice of intention to authorise entities acting as an independent third-party custodian or “depository” of assets typically associated with Closed-Ended Funds, as distinct from the current regulatory regime which requires such depositaries to be capable of safekeeping the assets of Closed-Ended Funds and Open-Ended Funds. As such the Consultation and proposal to update the Act are both appropriate and timely given the current increased focus on Closed-Ended Funds in the Irish Funds industry.

Our responses to the Consultation are set out below in the order provided for in the Consultation with the exception of Question 11 which we have addressed at the outset as our response to this question informs the remainder of our responses:

## **Question 11**

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

The Act pre-dates Ireland’s independence and the equivalent legislation remains in force in the United Kingdom (the “UK Act”). As such limited partnerships in the United Kingdom and Ireland are established pursuant to the same original piece of legislation. The UK Act has been amended specifically to cater for Closed-Ended Funds and as an overall comment, we would suggest that at a minimum, similar amendments are made to the Act except where otherwise indicated in our response to this Consultation. In particular, the distinction between limited partnerships, for example those used as family partnerships or for general business and Closed-Ended Funds operating as private fund limited partnerships (“PFLPs”) should be adopted. Our London team would be happy to provide further input on the impact and reception of the PFLP regime in the United Kingdom if so required by the DBEI. One of the most critical amendments made to the UK Act and required to be made to the Act is the removal of the limit on the number of limited partners in any one PFLP. It is worth noting that this limit could be removed from the Act by ministerial order.

In addition to the amendments made to the UK Act, we would propose further amendments to the Act in respect of PFLPs as follows:

- (a) Provision to be included in the Act to permit PFLPs to be established as umbrella funds allowing for any number of compartments/cells/sub-funds (“Sub-Fund”) to be established under one PFLP, with statutory segregation of assets and liabilities between each such Sub-Fund. Umbrella funds are now the market standard across every major investment funds domicile and as such our strong view is that similar capabilities should be provided for under the Act.
- (b) Provision to be included in the Act to permit the creation of different classes of interests in each 1907 LP or Sub-Fund, with the ability to allocate a specific asset to a specific class of interests within the same 1907 LP or Sub-Fund. This would permit maximum flexibility within the same legal structure, for example allowing investors to participate in certain underlying investments of the 1907 LP or Sub-Fund that are within such investor’s risk profile, while not requiring an investor to take any exposure to another asset held with the same 1907 LP or Sub-Fund which perhaps is too high risk for that particular investor.
- (c) The liability of a limited partner in a 1907 LP is limited insofar as such limited partner does not take part in the management of the 1907 LP business. It is common for limited partnership legislation to include a list of actions which a limited partner can take without being considered to be taking part in the management of the partnership. The requirement for such “safe harbour” provisions is particularly acute in respect of a PFLP. As an example, if an employee



of the investment manager of a PFLP is also an investor (and therefore limited partner) in the PFLP, any actions which that employee takes with respect of the management of the PFLP in its capacity as an employee of the investment manager should not jeopardise the limited liability of such employee in its capacity as a limited partner of the PFLP. We consider that the inclusion of an extensive but non-exhaustive list of safe harbour actions is essential to the success of the updated Act and would provide investors in 1907 LPs with statutory certainty in terms of the actions which are permissible without any risk to the limited liability of such investor as a limited partner of the 1907 LP. We would be happy to provide a list of suggested safe harbour provisions in due course.

- (d) The Act currently provides that a 1907 LP “*shall not during the continuance of the partnership, either directly or indirectly, drawn out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back*”. This provision is particularly unworkable in the context of a PFLP as it is common for investors in a PFLP to receive periodic distributions during the lifetime of the PFLP, in particular following the sale of an underlying investment by the PFLP and the realisation of returns. It is very uncommon for limited partnership legislation to contain such a restriction and as such our strong view is that this provision should be removed in its entirety or at least amended to include the wording “*unless other provided in the limited partnership agreement*”.
- (e) A common law limited partnership generally does not have legal personality and is therefore required to act through its general partner(s) and cannot enter into contracts, sue or be sued in its own name. This is also the case with 1907 LPs. The effect of this position is that the activity of the 1907 LP is technically carried on by the partners of the 1907 LP rather than by the 1907 LP itself and that counterparties must contract with the general partner on behalf of the 1907 LP, rather than the 1907 LP itself. Notwithstanding this general position, it has been possible to establish a limited partnership with legal personality in Scotland for more than 200 years. As certain counterparties or jurisdictions may not recognise or be familiar with limited partnership structures and the role of the general partner, 1907 LPs established without legal personality may be restricted in attracting investment from certain investors or partaking in certain investments. As such we are of the view that 1907 LPs established as PFLPs should be permitted to be established with or without legal personality, at the election of the general partner, to be made at the time of registration of the 1907 LP.
- (f) It is currently possible to migrate non-Irish investment funds from a variety of other jurisdictions to Ireland, with such funds permitted to register by way of continuation in Ireland. We would propose that similar provisions be included in the updated Act, in particular in light of the “Brexit opportunity” discussed in our response to Question 1 below.
- (g) In respect of a PFLP, we would propose that the information required to be provided at registration stage would be limited to the following (a) the name or dual foreign name of the 1907 LP; (b) the general nature of the business of the 1907 LP; (c) the registered office/service address/principal place of business (if retained) of the 1907 LP; (d) the term, if any, for which the 1907 LP is entered into for or, if for unlimited duration, a statement to that effect and the date of its commencement; (e) the name and address of the general partner (or each general partner). To the extent that any of this information changed, there should be an obligation to notify the CRO within 21 days of such change occurring.

## **Question 1.**

### **What are the benefits of limited partnerships for the Irish economy?**

As noted above, Ireland is a leading investment funds domicile, with over 16,000 people across Ireland directly employed in the funds industry. These employment numbers are particularly impressive given Ireland’s historic focus on Open-Ended Funds.



The Irish Funds industry is very highly regarded and many of the world's leading investment managers have established Open-Ended Funds in Ireland. Many managers have also sought to establish Closed-Ended Funds in Ireland, only to be forced to establish such funds in another jurisdiction due to the lack of a viable limited partnership structure. With a specific focus on Closed-Ended Funds, there is no doubt that Ireland would be primed for significant growth as an international investment funds domicile by offering best in class investment fund structures across the investment spectrum.

Closed-Ended Funds usually participate in activities which have a direct impact on the real economy, as distinct from Open-Ended Funds which mainly participate in the financial markets. For example, many Closed-Ended Funds partake in venture capital, providing much needed capital to small and medium enterprises ("**SMEs**")<sup>1</sup>. Real estate is another typical investment traditionally associated with Closed-Ended Funds, with many Closed-Ended Funds acquiring and developing real estate assets, providing construction jobs during the course of such development, with the completed development usually providing housing, office and/or retail space, each of which support the creation of further employment. In addition, Closed-Ended Funds have proven themselves to be a particularly valuable source of capital when traditional sources of capital, such as banks, are unwilling or unable to provide such capital. We would also highlight that the EU Capital Markets Union is seeking to reduce the dependence of European business on traditional sources of finance (i.e. banks) and increase the number of alternative sources of finance available, such as that which is offered by many Closed-Ended Funds.

From 2012 to 2016, Irish venture capital firms provided EUR1.2 billion in venture capital funding to Irish SMEs, and attracted a further EUR1.4 billion in syndicated investment with international venture capital firms. In the last ten years, these companies created over 20,000 high calibre jobs and raised over EUR5.5 billion<sup>2</sup> in venture capital funding. It is estimated that these directly created jobs also supported the creation of a further 60,000 jobs<sup>3</sup>. It is important to note that these figures relate solely to venture capital investment in SMEs meaning the total job creation across all sectors, including real estate development, would be significantly higher. In 2018 alone, EUR740 million<sup>4</sup> was invested in Irish SMEs from venture capital, an amount which represented a decline of 25% from 2017, where venture capital provided EUR994 million in investment to Irish SMEs, with EUR888<sup>5</sup> million invested in Irish SMEs in 2016. 1907 LPs are often used to facilitate the provision of venture capital to Irish SMEs and have recently been used to provide funding to SMEs across a very wide range of sectors including infrastructure, renewable energy, real estate and forestry.

The impending departure of the United Kingdom from the EU ("**Brexit**") presents a particular opportunity to Ireland in respect of PFLPs. The United Kingdom is a very popular jurisdiction for the establishment of Closed-Ended Funds, and such funds are ordinarily established as PFLPs pursuant to the UK Act. PFLPs established pursuant to the UK Act are considered to be alternative investment funds ("**AIF**") within the meaning of the Alternative Investment Fund Managers Directive ("**AIFMD**") and until Brexit occurs, an EU AIF. As discussed in our response to Question 3 below, AIFMD provides that an EU AIF which has appointed an authorised EU alternative investment fund manager ("**AIFM**") may be marketed to professional investors in the EU on a passported basis. PFLPs established under the UK Act will no longer be considered to be an EU AIF following Brexit and therefore would no longer be able to avail of the AIFMD marketing passport. The common origin of the Act and the UK Act presents Ireland with a unique opportunity to offer an investment fund structure which is very similar to a PFLP established pursuant to the UK Act, but which retains access

<sup>1</sup> Irish Venture Capital Association ("**IVCA**") Venture Pulse 2018 - <https://www.ivca.ie/wp-content/uploads/2019/02/IVCA-VenturePulse-2018.pdf>

<sup>2</sup> IVCA estimate.

<sup>3</sup> IVCA 2016 Report on the impact of Venture Capital in Ireland - [http://www.ivca.ie/wp-content/uploads/2016/08/IVCA\\_Economic\\_Impact\\_Final.pdf](http://www.ivca.ie/wp-content/uploads/2016/08/IVCA_Economic_Impact_Final.pdf)

<sup>4</sup> IVCA Venture Pulse 2018 - <https://www.ivca.ie/wp-content/uploads/2019/02/IVCA-VenturePulse-2018.pdf>

<sup>5</sup> IVCA Venture Pulse 2018 - [https://www.ivca.ie/wp-content/uploads/2018/03/IVCA\\_Venture\\_Pulse\\_DATA\\_SHEET\\_Q417\\_Publish.pdf](https://www.ivca.ie/wp-content/uploads/2018/03/IVCA_Venture_Pulse_DATA_SHEET_Q417_Publish.pdf)



to the AIFM marketing passport and the EuVECA marketing passport (as discussed below). In addition, and as previously mentioned, the common law limited partnership is the default structure used for Closed-Ended Funds globally and following Brexit, Ireland will be the only common law jurisdiction in the EU.

To our mind it is a missed opportunity for Ireland not to benefit on every aspect of the Closed-Ended Fund lifecycle. By providing a best in class Closed-Ended Fund structure in the 1907 LP, this would create further employment (and by extension revenue from taxation) in respect of the establishment and servicing of such Closed-Ended Funds in Ireland, as well as the aforementioned “downstream” benefit by such Irish domiciled Closed-Ended Funds providing venture capital to SMEs and financing real estate development.

## **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.**

Common law limited partnerships are used across a broad range of business activity, including for small businesses and family partnerships. Without the 1907 LP, the only common law limited partnership in Ireland would be the ILP, a legal structure designed solely for use as a collective investment scheme and required to be regulated by the CBI. Such a structure would not be appropriate for a large number of 1907 LPs and as such there is an obvious and proven need for an unregulated common law limited partnership in Ireland.

The constitutive document of a common law limited partnership is a limited partnership agreement, which is contractual in nature and therefore more flexible than the articles of a company, which are restricted in terms of content and form by company law and precedent. It is possible to establish a common law limited partnership in most common law jurisdictions, including the United Kingdom, Canada, Australia and the United States. In addition, certain civil law jurisdictions also provide for similar structures, such as Germany, France and Luxembourg.

It is also notable that the flexibility of the 1907 LP also provides a number of benefits when used as a PFLP. For example, common law limited partnerships are tax transparent, meaning that the tax payable by limited partners would not be altered by the use of a 1907 LP and payable in the same way as if each limited partner had invested directly in the underlying investment. Such tax transparency is wholly consistent with the OECD Action Plan on Base Erosion and Profit Shifting and the EU Anti-Tax Avoidance Directives.

As noted in the Consultation, there has been a marked increase in the number of 1907 LPs established pursuant to the Act in recent years. The continued and increased use of 1907 LPs highlights the need for such a legal structure and indicates, to some degree, a fitness for purpose, or, more likely in our view, a reluctant acceptance of the limitations of the Act. That said, our expectation is that the majority of 1907 LPs established are for domestic use. With appropriate amendments, the Act could provide Ireland with a modern and market leading limited partnership structure suitable to be used for general business purposes or as a family partnership and also as a PFLP.

## **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.**

Whilst it is difficult to accurately determine the exact reasons for the increase in the registration of 1907 LPs in more recent years, we can offer the following possible explanations:



- (a) As Irish property prices stabilised by the end of 2014, the urgent need to develop housing, office and retail space began to become apparent. As previously mentioned, common law limited partnerships are the default structure for Closed-Ended Funds, including those investing in “real assets” such as real estate. As such, after many years without any development taking place, the stabilisation of the Irish property market could have resulted in an increase in the number of 1907 LPs established in more recent years, in order to develop housing, retail and office space.
- (b) Ireland has relatively recently become home to many of the world’s leading technology companies, across a number of sectors including big data, cloud computing, internet of things, social media and medical technologies. The presence of such companies in Ireland and the job opportunities presented by such companies has resulted in an increased focus in the Irish education system on the skills required by such companies. These companies also hire many thousands of people in Ireland, resulting in inevitable spin-outs of smaller companies established by former employees who have benefitted from the skills, training, experience and exposure received during their time working for a world leading organisation. Many Closed-Ended Funds are established to provide venture capital to technology companies. For example in 2015 alone, 98% of venture capital raised for Irish SMEs were in the area of “high technology”<sup>6</sup>. With the continuing development of the technology cluster in Ireland, the growth in these sectors could have contributed to the increased number of 1907 LPs established in more recent years.
- (c) AIFMD was implemented in Ireland in 2013 and introduced new rules for AIFMs, including more stringent requirements with regards to the marketing of AIFs to professional investors in the EU, with significant restrictions introduced by certain EU member states with regards to non-EU AIFs. Certain non-EU jurisdictions are very popular jurisdictions for the establishment of Closed-Ended Funds but following the implementation of AIFMD, the marketing of such non-EU AIFs to EU investors was significantly hampered. An Irish PFLP would be considered to be an EU AIF pursuant to AIFMD and therefore be in a position to benefit from a pan-EU marketing passport provided for under AIFMD. The difficulty in marketing non-EU AIFs to EU investors versus the relative ease to market EU AIFs (including those established as a 1907 LP) to EU investors could have contributed to the increased number of 1907 LPs established in more recent years.
- (d) The European Venture Capital Regulation (“EuVECA”) came into force across the EU in 2013 and provided EU AIFs with an alternate marketing passport to the AIFMD marketing passport mentioned above. Unlike the AIFMD marketing passport, EuVECA managers are not required to obtain full authorisation under AIFMD but rather may rely on an exemption subject to the AIFs managed by such manager coming within certain assets under management thresholds (the “Small Manager Exemption”). As Closed-Ended Funds are typically smaller in size than an Open-Ended Fund, the Small Manager Exemption is more likely to be availed of by a manager of Closed-Ended Funds. The adoption of EuVECA could have contributed to the increased number of 1907 LPs operating as Closed-Ended Funds established in more recent years.

#### **Question 4.**

**Please set out your view on whether limited partnerships should be required to use the term “Limited Partnership” in the business name.**

Our view is that 1907 LPs should be required to include either “Limited Partnership”, “LP” or “L.P.” in its business name. The liability of a limited partners in a 1907 LP is limited, whereas the general partner has unlimited liability for the debts and obligations of each 1907 LP for which it acts as general partner. Limited partners are not permitted to take part in the management of the 1907 LP business whereas the general partners are responsible for the day to day operation of the 1907 LP.

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<sup>6</sup> [http://www.ivca.ie/wp-content/uploads/2016/08/IVCA\\_Economic\\_Impact\\_Final.pdf](http://www.ivca.ie/wp-content/uploads/2016/08/IVCA_Economic_Impact_Final.pdf)



Given the differing levels of authority and liability standards for different categories of partners in a 1907 LP, it is essential that counterparties contracting or otherwise dealing with a 1907 LP are aware of the legal nature of the 1907 LP and make appropriate enquiries as to the status of each partner with whom they are dealing in order to confirm that such partner has the authority to bind the 1907 LP. The inclusion of either "Limited Partnership", "LP" or "L.P." in the name of a 1907 LP would be of assistance in this regard.

As a general comment, in order to recognise and facilitate the use of 1907 LPs in jurisdictions where the Roman alphabet is not used, it should also be permissible for 1907 LPs to adopt a dual foreign name, being an additional name in any language not utilising the Roman alphabet and utilising any letters, characters, script, accents and other diacritical marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet.

## **Question 5.**

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

Our view is that 1907 LPs should be required to maintain a registered office in Ireland, in keeping with international best practise, for consistency with limited companies incorporated in the State and, in respect of a PFLP, the requirements of AIFMD. It is imperative that Irish structures can operate with ease within Ireland but also across international borders and in our view, requiring a 1907 LP to designate any jurisdiction as its principal place of business is unnecessary and does not provide any meaningful additional benefit beyond the requirement to maintain a registered office.

## **Question 6.**

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

The current process is overly burdensome, in particular in respect of a PFLP when compared to the requirements applicable to similar structures in peer jurisdiction. Currently a PFLP is required to submit to a statement to the CRO specifying any change to the name, general nature, principal place of business, the partners or name of any partner, the term of character of the PFLP, the sum contributed by any limited partner and the liability of any partner.

For PFLPs, it would be less administratively burdensome for both the operator of the 1907 LP and the CRO if the information required was modernised and only required to be provided on an annual basis as part of an annual filing. We would propose that the information required to be submitted to the CRO upon registration of a PFLP (as outlined in our response to Question 11) be included in the annual filing as well as the aggregate sum of contributions by limited partners, identifying any change from the previous year's annual filing. We would also propose that similar requirements of beneficial ownership and anti-money laundering currently applicable to other Irish fund structures be applied to PFLPs.

## **Question 7.**

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

Filings with the CRO should be made by electronic filing. The general partner of the 1907 LP should be required to ensure that such filing is made, by submitting such filing or by nominating another person to make such filing on behalf of the 1907 LP.



## **Question 8.**

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

1907 LPs, where all general partners are limited companies, are currently obliged to return accounting documents under the European Communities (Accounts) Regulations 1993.

AIFMD (and the implementing legislation in Ireland) imposes significant transparency requirements on AIFMs, applicable in respect of each EU AIF (which would include a PFLP) that such AIFM manages, including that an annual report for each financial year is made available no later than 6 months following the end of the financial year to be provided to limited partners on request and to the CBI. It is also standard market practise that the limited partnership agreement would dictate that reports, including audited accounts, are provided to limited partners periodically.

We consider the current requirements to be proportionate and therefore would not propose that the current requirements in respect of 1907 LPs be amended.

## **Question 9.**

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

Our view is that the Registrar should be given the power to strike-off 1907 LPs from the register. The retention of references to dissolved 1907 LPs does not provide any meaningful benefit at best, and at worst could be considered to be misleading. We expect this current position also presents a growing (and unnecessary) administrative burden for the Registrar.

## **Question 10**

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

The power of the Registrar should extend to voluntary strike-offs in a situation where the Registrar is notified of the dissolution of a 1907 LP and also involuntary strike-offs where, for example, the obligations applicable in respect of a 1907 LP (annual filings, payment of fees etc) have consistently not been met or if the Registrar has good reason to believe that a 1907 LP is no longer operating.

In the case of an involuntary strike-off of a 1907 LP which the Registrar has good reason to believe is no longer operating, a procedure should be formulated and adopted so as to seek avoid the striking off of 1907 LPs that are still in operation, therefore potentially becoming general partnerships and resulting in the loss of limited liability by the limited partners. In respect of an involuntary strike-off of recalcitrant 1907 LPs, a notification process and period should be formulated and adopted to seek to ensure that each partner of a 1907 LP at risk of being struck-off is aware of the impending strike-off well in advance, with the limited partners provided with sufficient authority to remedy any such recalcitrance on the part of the general partner (again without any risk to limited liability status). A process for restoring 1907 LPs to the register should also be formulated and adopted in the event that a 1907 LP is struck from the register in error.


In respect of voluntary strike-off, the Act currently provides that in the event of a dissolution of a 1907 LP *"its affairs shall be wound up by the general partners unless the court otherwise orders"*. We would propose that an additional requirement would be placed on the general partner of the 1907 LP to ensure that the Registrar is notified when such a 1907 LP is dissolved and requesting



strike-off, providing certain confirmations to the Registrar in respect of the debts and liabilities of the 1907 LP.

We would be very happy to discuss the proposed update to the Act with the Department in further detail, including to provide further insight in relation to the recent updates to the UK Act and the success of the PFLP regime.

Yours faithfully



Simmons & Simmons