

Irish Funds response to DBEI's review of the Limited Partnerships Act 1907

Overview

The Irish Funds Industry Association (“**Irish Funds**”) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies.

Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 16,000 professionals across 12 counties in Ireland¹, providing services to 7,252 Irish regulated investment funds with net assets of over EUR 2.4 trillion². Of these funds, 2,767 are Alternative Investment Funds (“**AIFs**”) falling within the scope of the EU Alternative Investment Fund Managers Directive (“**AIFMD**”)³ and holding assets amounting to EUR 621 billion.⁴

An increasingly important aspect of this investor activity relates to sophisticated investors seeking to come together specifically to fund investments in private business and a wide range of assets and projects that are complex, illiquid, bespoke and therefore mainly restricted to professional investors. Limited partnerships facilitate these kinds of investment propositions.

Limited partnerships established under the Limited Partnerships Act 1907 are not authorised by the Central Bank of Ireland (“**Central Bank**”) but certain of these, due to their inherent characteristics, meet the definition of an AIF and therefore fall within the AIFMD regulatory regime and it is in the context of these fund-based limited partnerships that our response is drafted.

Irish Funds has long been supportive of updating Ireland’s limited partnership legislation to take account of more recent developments in the market and the legal and regulatory

¹ Source: Irish Funds Annual Employment Survey, 2018

² Source: Central Bank of Ireland, November 2018

³ Directive 2011/61/EU

⁴ Source: Central Bank of Ireland, November 2018

environment relating to investment funds. In this regard, we support the updating of the Investment Limited Partnerships Act 1994 and the Limited Partnerships Act 1907 (the “**1907 Act**”) insofar as it relates to investment funds. The 1907 Act has not been substantially updated since its inception and, as such, has not kept pace with market developments and other legislation. Therefore, we welcome the publication by the Department of Business, Enterprise and Innovation (“**DBEI**”) of this consultation and we have provided below our responses from an investment funds industry perspective.

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

Partnerships are one of the oldest forms of legal structure for engaging in commercial activity and are commonly used throughout the world. The purpose of limited partnerships is to enable capital investment in commercial activity by partners who do not engage in management activity and retain limited liability in respect of that business. As such, limited partnerships serve an important purpose in terms of facilitating business activity on a joint venture basis and channelling investment into the real economy. The activity of limited partnerships spans the entire economy, from agri-food and forestry to manufacturing, technology, engineering, construction and property development to tourism, professional services and investing. Therefore, the benefit of limited partnerships as a vehicle through which to conduct businesses is evident from the range of businesses using it.

Limited partnerships also serve a very important economic purpose in providing financing to the real economy by enabling business or investment partners to come together to make an investment and contractually agree between them, under a Limited Partnership Agreement, how the investment will be made and how the return will be shared. This can be done on a joint venture basis (e.g. with a small number of “angel” or “dragon” investors) or limited partnerships may be structured in order to provide a pooling vehicle for a small number of like-minded investors to join together and allow investment decisions to be conducted by a third party with particular expertise in the types of investment being made, i.e. an investment manager. These investments are typically made into private (non-listed) businesses operating in a broad range of business sectors as well as into physical assets and projects such as infrastructure, renewable energy, real estate and forestry (“**Real Economy Investments**”).

Partnerships established under the Limited Partnerships Act 1907 (“**1907 LPs**”) are currently being used for investment fund purposes. By way of example, in 2018, EUR 740 million was invested in Irish SMEs from venture capital⁵ and typically this investment would have taken place via 1907 LPs. Such investment stimulates growth, innovation and the creation of new businesses, all of which leads to increased employment and it has been estimated that venture capital supports over 60,000 direct and indirect jobs in the Irish economy.⁶ However, the level of investment activity taking place in 1907 LPs still remains low relative to the opportunity to use the structure more extensively and on a global basis, were it to be updated. Irish Funds sees an opportunity to use 1907 LPs more extensively as AIFs, which would lead to greater employment and tax revenue arising from the establishment and servicing of these funds by

⁵ Source: Venture Pulse 2018 Funds raised by Irish SMEs 2018, Irish Venture Capital Association (“IVCA”)

⁶ Source: The Economic Impact of Venture Capital in Ireland, IVCA, 2016

the industry in Ireland (see our response to Question 2). While such funds would primarily target global investments, developing a fit for purpose limited partnership structure in Ireland will additionally create potential for further investment locally. Therefore, we view the potential future benefits of retaining and updating 1907 LPs as significant for the Irish economy.

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.

1907 LPs serve a meaningful commercial and investment related purpose, and with modernisation, 1907 LPs can play a more significant and important economic role. Therefore, we consider that not only is there is a continued need for limited partnerships but that updating the 1907 LP framework is a matter of strategic development for the funds industry as well as from a wider policy perspective.

We note the following reasons in support of this view:

- I. **Use of partnerships generally.** As outlined above, work carried on by partnerships encompasses the full spectrum of business and industry. There are many different types of partnership, ranging from informal associations between two persons engaged in a short-term commercial enterprise to small family partnerships to major professional or business partnerships with many members, a detailed partnership agreement and a management structure as sophisticated as that of most companies. A limited partnership framework gives partners the freedom to stipulate the management structure of a firm and the terms upon which they associate in business, without taking a one size fits all approach which is generally seen in corporate structures. The vast differences in the size and nature of these partnerships illustrate the flexibility of the limited partnership as a business entity and, therefore, its continuing relevance in the marketplace. It is therefore important to continue to support the valuable economic activity conducted through 1907 LPs. Other jurisdictions across the world (e.g. the UK, Germany, France, the USA, Australia, Canada) maintain and update their limited partnership regimes because they see the commercial and economic benefits of doing so.
- II. **Use of limited partnerships for investment purposes.** Limited partnerships are frequently used for investment purposes, channelling much needed capital into the real economy. This investment flows predominately into non-listed companies that range from start-ups to larger SMEs and mid-cap companies as well as in physical assets and projects relating to infrastructure, technology, machinery and real estate. Investment from limited partnerships is also used to rescue and turn around business. It is important to enable this kind of real economy investment activity to continue via a limited partnership structure, which is not easily replicated in a corporate structure. Limited partners, i.e. investors, value using a limited partnership structure because:

- a) There is no share capital requirement as in a corporate structure – the limited partners own a proportionate share of the underlying investments rather than shares in a company.
- b) Limited partners can agree the bespoke contractual terms on which they will participate in investments in a Limited Partnership Agreement (“LPA”).
- c) A limited partnership does not alter the tax position of the limited partners, i.e. they will be taxed on the investment as if they invested directly in it themselves. This is because a limited partnership is tax transparent, i.e. the tax authorities look through to the beneficial owners in the structure in order to determine the appropriate tax treatment rather than taxing the structure itself. For example, this is important for tax exempt pension funds or for investors located in a country that has signed a double taxation treaty with the country in which they are investing so that they can claim the applicable tax treaty relief. This approach is entirely consistent with international norms and recent developments at OECD and EU level.⁷

III. **Use of limited partnerships as investment funds.** Related to the above, limited partnerships are frequently used internationally for investment fund purposes, although less so in Ireland, owing to the outdated nature of the legislation. The funds, i.e. AIFs, making these investments are generally not open to the public/retail investors and the investors are typically professional investors and include public pension funds, sovereign wealth funds, private sector pension funds and insurance companies, endowments and foundations as well as private investors.

While Ireland has a range of other available investment fund structures, they are not well-suited to all fund types or the needs of the investors outlined above. Examples of this include that existing fund structures: (i) are ill-suited to the needs of professional investors who are investing on a longer-term basis in Real Economy Investments; (ii) they have higher operating costs which can be prohibitive for the typically smaller pools of capital deployed in this space relating to SMEs and various projects (in contrast with investing on the stock exchange), and (iii) they are required to operate under a specific regulatory regime which does not account for and, in certain cases, conflicts with other regulatory regimes under EU legislation (further described in (V)(b) below).

⁷ The tax transparent treatment of limited partnerships is wholly consistent with the OECD Action Plan on Base Erosion and Profit Shifting (“BEPS”). The BEPS plan is a wide-ranging initiative seeking to counteract a number of perceived abusive tax practices, including the claiming of benefits under tax treaties in inappropriate circumstances. The use of entities that are transparent for tax purposes, such as a limited partnership, is fully aligned with this objective as it ensures that claims for tax treaty benefits are determined with reference to the real investors (i.e., the partners). Indeed, under the BEPS action dealing with the treaty entitlement and the inadvertent consequences for investment funds, the OECD highlighted the merits of tax transparent vehicles in facilitating tax treaty relief for individual investors that are entitled to that tax treaty relief. We also note that the limited partnership (and its tax transparent treatment) is fully aligned with the EU Anti-Tax Avoidance Directives which oblige all EU Member States to introduce a number of anti-tax avoidance measures, many of which are based on principles in the OECD BEPS action plan.

In contrast to other more commonly used Irish fund structures, a fund structured as a limited partnership enables investors to:

- a) have certain investor-specific considerations and requirements recognised and negotiate specific terms with their partners on which the investments will be made;
- b) have voting rights even when capital has not yet been contributed to the fund (typically such funds operate where the investors specify a capital commitment that will be drawn down over a period of time, as investments are identified, through various “capital calls” rather than tying up capital in an initial subscription that may not be invested);
- c) avail of the transparency of capital accounting showing the performance of an investor’s individual participation in the investments rather than a statement of shares owned; and
- d) have the benefit of a familiar legal structure which is recognised and understood in most developed jurisdictions versus more bespoke structures which are not immediately recognisable and require further explanation.

These are characteristics heavily desired and generally considered a market standard for Real Economy Investing through fund structures and, as such, there is a continued need to maintain and develop further the limited partnership as an investment fund structure.

IV. **Growth opportunities.** The Real Economy Investing space is a growth area globally with estimated assets under management of almost US \$4.5 trillion, growing by over 30% in the past five years⁸. This has generated significant demand for the usage of limited partnership structures. Not only are jurisdictions passing new laws to introduce limited partnerships for the first time, they are also reforming existing laws to ensure that their models remain attractive to domestic and international investors. In Europe alone, the UK updated its limited partnership legislation in 2017⁹, France created a new limited partnership fund vehicle in 2015¹⁰, and Luxembourg introduced a new limited partnership fund vehicle and updated existing partnership vehicles in 2013¹¹.

Legislative reform of Ireland’s limited partnership legislation would make Ireland a more attractive location for global investment managers with investment strategies that normally use limited partnerships, and consequently bring business opportunities that will increase employment and tax revenue. In May 2015, Irish Funds estimated that over 1,400 new jobs could be created by this activity within five years, bringing in

⁸ Source: Prequin, 2017

⁹ The Legislative Reform (Private Fund Limited Partnerships) Order 2017 (2017 No. 514)

¹⁰ The “société de libre partenariat” (“SLP”) was created by Law No. 2015-990 of 6 August 2015

¹¹ The “société en commandite spéciale” was created by and the “société en commandite simple” was updated by amendment to the law of 10 August 1915 by the law of 13 July 2013 on alternative investment fund managers.

approximately €187 million in tax revenue. This is in addition to the estimated 16,000+ people currently employed by the funds industry in Ireland.

These projections were based on a five-year plan for fund domiciling, fund servicing and associated activities. Given the complexity and specialist nature of real economy investing, such structures would typically generate more jobs for the local economy than other forms of investment funds. Revenues from high value investment management roles and all the associated specialist activity (e.g. external valuers, advisors etc.) are not possible to quantify at this stage but is expected to significantly add to revenue and employment, both directly and indirectly. It is also important to note that while Ireland lacks a competitive offering in this space, existing opportunities are being missed out on.

Amending our limited partnership legislation is vital to prevent a further loss of business in the funds industry, as limited partnership structures increase in popularity. The absence of fit for purpose limited partnership structures in Ireland for investment funds forces fund managers that have established other funds and fund platforms in Ireland to look at other locations in Europe. This reality continues to put existing business in the funds industry in Ireland at risk and is now a frequent point of feedback on the shortcomings of the jurisdiction relative to other European locations.

Owing to the global focus of the funds industry, the vast majority of fund set ups would be in connection with investments and investors located outside of Ireland. However, developing a fit for purpose limited partnership structure in Ireland will additionally create potential for local investment.

- V. **Use of investment fund limited partnerships in support of policy goals.** In light of the above features, limited partnership structures are frequently used by governmental actors in fulfilment of policy goals. The governmental organisation often acts as a seed or anchor investor, thus enabling other investors to co-invest as limited partners on a commercial basis in projects which also deliver on policy objectives. In addition to these governmental bodies, the kinds of investors that typically use limited partnerships are include large institutional investors such as pension funds and insurance companies. Thus, state sponsored organisations are able to amplify the economic effect of their investment activities through co-investment via limited partnerships. Examples of this kind of activity and recent policy initiatives include:

- a) **Investment to support SMEs and innovation in the economy.** For example, the European Investment Fund, the British Business Bank and Ireland Strategic Investment Fund (“**ISIF**”) are all examples of governmental organisations that use limited partnership fund structures to achieve their various mandates to support economic development and invest in SMEs and innovation.

b) EU Capital Markets Union and related EU fund regimes. The EU launched its Capital Markets Union¹² (“**CMU**”) initiative in order to provide alternatives to bank finance and enable greater diversification of funding to the EU economy and improve access to finance for Europe’s businesses. This initiative has focussed on channelling capital into more productive use for the benefit of the EU’s economy, which relates to the use of limited partnership structures. Aligned to this effort, the EU has devised harmonised fund product frameworks to promote real economy investing and social impact investing. These include the European Long-term Investment Fund (“**ELTIF**”)¹³, the European Venture Capital Fund (“**EuVECA**”)¹⁴ and the European Social Entrepreneurship Fund (“**EuSEF**”)¹⁵.

To date, five EuVECAs have been authorised in Ireland¹⁶ and the typical structure used in Ireland for this fund product is the 1907 LP. To the best of our knowledge, no EuSEFs or ELTIFs have been established in Ireland to date. A challenge has arisen with regard to the implementation of these European fund product regimes in Ireland when they are established with any of the usual investment fund structures authorised by the Central Bank¹⁷. The consequence of using one of these fund structures is that, in effect, such funds become subject to dual product regimes (the European harmonised regime and the domestic product rules applied by the Central Bank). These product regimes duplicate and conflict with one another, e.g. in relation to subscription requirements, eligible investments and investment restrictions. The net effect of the overlapping product regimes is to make the setting up of these harmonised EU products confusing and unappealing, which has contributed to the lack of uptake in Ireland.

This challenge could be overcome by establishing a 1907 LP with one of the European fund product regimes mentioned above (in fact we understand that this has been done in the case of the EuVECA but more widespread application would be curtailed unless the 1907 LP regime were updated). As the mandated competent authority in Ireland in respect of the ELTIF/EuVECA/EUSEF the Central Bank authorises these products but because the 1907 LP is not subject to the AIF Rulebook, only the EU rules apply, which addresses the challenge of a dual product regime. As currently available, however, the 1907 LP is largely unsuitable, meaning Ireland is not taking full advantage of these harmonised EU products.

¹² See [European Commission Capital Markets Union webpage](#)

¹³ Regulation (EU) 2015/760

¹⁴ Regulation (EU) No 345/2013

¹⁵ Regulation (EU) No 346/2013

¹⁶ Source: [ESMA register](#)

¹⁷ Collective investment schemes established under any of: the Irish Collective Asset-management Vehicles Act 2015; the Unit Trusts Act 1990; Part 24 of the Companies Act 2014; the Investment Limited Partnerships Act 1994; the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

c) Sustainable investing. The financing of sustainable energy and eco-friendly technologies is an EU and Irish policy goal and investment funds can play a leading role in providing this financing. There is a very significant opportunity for 1907 LPs in this area given their role in Real Economy Investing. The funding of sustainable infrastructure and technologies by investment funds would typically take place through initiatives involving limited partnership structures, given the bespoke and longer-term nature of such financing arrangements. Reform of limited partnership legislation is therefore aligned with Action 13 of Ireland's National Mitigation Plan on Climate Change regarding the exploration of "options for non-Exchequer sources of financing for climate measures".¹⁸

VI. **Brexit opportunity.** The UK is one of the main centres for the formation, structuring and operation of limited partnerships worldwide. As a consequence of Brexit, UK limited partnerships are likely to be less attractive as a legal structure for fund managers and investors, given that post Brexit they would no longer constitute EU AIFs falling under the AIFMD regime and therefore would not benefit from the marketing passport operating under the AIFMD. With the UK leaving the European Union, there is a significant gap in the market for a common law limited partnership vehicle within the European Union. Given that UK and Irish limited partnership legislation have the same origin, there is strong interest among UK fund sponsors to use the Irish 1907 LP as a collective investment fund vehicle for real economy investing. In order for Ireland to maximise this opportunity, it is essential that the Limited Partnerships Act 1907 is updated in line with recent UK reforms, which provide a clear path to developing a modern, fit for purpose limited partnership fund structure.

VII. **UK limited partnership reform as an example.** The importance of limited partnership structures in the context of collective investment funds was highlighted in the UK in July 2015 with the publication by the UK government of its "Proposal on using Legislative Reform Order"¹⁹ to change the Limited Partnership Act 1907 for private equity investments (the "**UK Fund LP Reforms**").

Like Ireland, the UK limited partnership structure is governed principally by the Partnership Act 1890, the Limited Partnerships Act 1907 and rules of equity and common law, which have remained largely unchanged for much of the 20th century. As a result, existing UK limited partnership legislation was considered not to have kept pace with developments in the investment funds space. The UK Fund LP Reforms were intended to eliminate many of the uncertainties and challenges associated with existing UK limited partnership law so as to ensure that the UK limited partnership

¹⁸ [National Mitigation Plan](#), July 2017

¹⁹ See "[Proposal on using Legislative Reform Order to change partnership legislation for private equity investments – consultation on draft legislation](#)", HM Treasury, July 2015 and "[Proposal on using Legislative Reform Order to change partnership legislation for private equity investments – summary of consultation responses](#)".

remains the market standard structure for European private equity and venture capital funds and other types of funds that are restricted to professional investors.

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.

As noted above, the 1907 LP is outdated, and this has severely restricted its use in the investment funds world. Notwithstanding this, our members have reported an increase in the use of the 1907 LP in an investment fund context, which would explain some, but not all, of the recent increase in limited partnership registrations. We have identified two primary reasons for this:

- 1. Asset segregation by Irish regulated investment funds.** The vast majority of Irish regulated investments hold multiple assets. There are commercial reasons why an investment fund may wish to legally segregate its assets into various categories (whilst still held within the same fund). This is especially the case where the fund holds physical or “real assets” such as real estate, renewable energy infrastructure, wind turbines, etc. (as opposed to shares). Limited partnerships offer an effective way to achieve such segregation, which could be related to bank financing arrangements for investment funds. An investment fund may seek a secured loan from a bank to finance the purchase or development of an asset. The loan would be secured on some specific assets in the fund (but not all assets in the fund). In such a case, the bank will seek to segregate those assets over which it is being granted security, so that it can easily enforce its security in the event of a failure to repay the loan. Over the past few years, an established practice has developed to achieve this segregation through the use of 1907 LPs, which satisfies the requirements of the financing bank to be able to take security over the asset in the event of a default.
- 2. Preservation of an investor’s individual tax treatment.** Limited partnerships are tax transparent, and tax transparent investment vehicles have become increasingly popular in recent years. They offer investors the advantages of collective investment while still preserving each investor’s own specific taxation status. In other words, limited partnerships allow for the combining of assets while the income, profits and gains of the combined investment are taxed as if the investors themselves had directly invested in the assets. Increasingly, institutional investors such as large pension funds frequently prefer this form of investment vehicle, as they keep their tax treatment as straightforward as it would have been had they directly invested and they are well-versed on how they themselves should be taxed on each type of investment they make. This has in turn encouraged the use of limited partnerships over the past few years, although usage of the 1907 LP in an investment fund context remains constrained due to the outdated nature of the legislation.

As noted previously, the tax transparent treatment of limited partnerships is wholly consistent with the OECD Action Plan on Base Erosion and Profit Shifting (“**BEPS**”) and the EU Anti-Tax Avoidance Directives.

We do not believe that the increase in the use of limited partnerships since 2015 is connected with improving the tax treatment of an investment or activity. The use of limited partnerships does not result in a different tax treatment to that which arises if the assets were owned directly by the investors.

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

We see no issue with the use of the term limited partnership in the business name, but it should also be possible to refer to "LP" in addition to "Limited Partnership" in its business name.

Furthermore, in the case of use of a dual foreign name²⁰ which is designed to enable a limited partnership operating in a non-English speaking jurisdiction (e.g. China) we propose to have official recognition of a translated name in that jurisdiction.

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

Our views on limited partnerships maintaining a principal place of business (“**PPoB**”) or a registered office in Ireland are solely with reference to a 1907 LP in the form of an AIF.

In order to satisfy the definition of being an Irish AIF under Regulation 5(1) of the AIFM Regulations²¹, a limited partnership in the form of an AIF must be "established" in Ireland. Regulation 5(1) defines "established" as the AIF being "authorised or registered in [Ireland], or, if the AIF is not authorised or registered, the AIF having its registered office in [Ireland]".

Accordingly, for a 1907 LP established as an AIF, we agree with maintaining a PPoB. Further, we see no issue with the AIF limited partnership maintaining a registered office in Ireland, as that would be consistent with the AIFMD.

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.

Again, our views are expressed solely with reference to a 1907 LP in the form of an AIF. We consider that, an annual “confirmation statement” would be more appropriate than an annual return. A limited partnership and a company are structured differently at the organisational level and treated differently for tax purposes. Imposing a directly equivalent regime regarding annual returns on a limited partnership would not take those differences into account. Furthermore, it should be noted that 1907 LPs structured as AIFs are subject to detailed regulatory reporting and investor disclosure requirements under the AIFMD.

²⁰ A "dual foreign name" means an additional name in any language not utilising the Roman alphabet, 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.

²¹ S.I. No. 257/2013 - European Union (Alternative Investment Fund Managers) Regulations 2013

The UK Government considered this matter as part of a recent reform of limited partnership law (the “**UK LP Reforms**”)²² and decided that an annual confirmation would be appropriate as a useful routine assessment of the limited partnership. An annual confirmation statement would also have a separate use in that it would indicate if a partnership ceased to carry on business. There is currently no provision of the 1907 Act that requires a limited partnership to notify the registrar that it has ceased business and no power of the registrar to strike a limited partnership off the register (hence the lengthy list of limited partnerships). An annual confirmation statement would therefore contribute in a separate and much more significant way towards ensuring an accurate view of the number of registered of limited partnerships in Ireland.

We propose that the annual confirmation statement cover the following details:

- The name of the firm
- The address of the principal place of business
- Any change in partners or the name of any partner
- The liability of any partner by reason of the partner becoming a limited instead of a general partner or a general instead of a limited partner
- General nature of the business (investment funds would be designated as “AIF limited partnerships”)
- The aggregate sum of contributions by limited partners
- Statement of the aggregate increase in capital contributions to the limited partnership

Finally, we would note that other fund structures are required to comply with the Beneficial Ownership Register requirements of the Fourth Anti-Money Laundering Directive. For consistency with these other fund structures and in keeping with EU AML legislation, we think that equivalent requirements could apply to 1907 LPs as well and ensure transparency of those with significant influence over the limited partnership.

Consequently, we believe the provision of the annual confirmation statement including the information referred to above should replace the existing ongoing filing requirements under Section 9 of the 1907 Act. Furthermore, for consistency in filings, we propose that the information provided at initial registration under Section 8 of the 1907 Act should also be aligned with the above.

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

Please see our response to Question 6. We would recommend that a confirmation statement which confirms the information which is on file with the registrar (either from initial registration or as later updated) is confirmed as valid be utilised and that such filing by the General Partner

²² See “[Limited Partnerships: Reform of Limited Partnership Law – The Government response to the consultation](#)”. Department for Business, Energy and Industrial Strategy, December 2018.

or, if appointed, an option could be included to allow the Alternative Investment Fund Manager (“AIFM”) to make such filing.

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

We do not think that this is necessary or should be required in the context of 1907 LPs structured as AIFs. As previously noted in the response to Question 6, a limited partnership and a company are structured differently at the organisational level and treated differently for tax purposes. Imposing a directly equivalent regime regarding financial statements on a limited partnership does not take those differences into account.

Specifically in the context of 1907 LPs which would be subject to AIFMD, and the regulations that implement AIFMD in Ireland (the “**Regulations**”) ²³, we would note that such entities are already required to prepare accounts pursuant to Regulation 23, which obliges an AIFM to ensure an annual report, which includes, *inter alia*, a balance sheet or statement of assets and liabilities, income and expenditure account and a report on the financial activities during the year. The requirement for an AIFM to provide this report will ensure that limited partners receive financial information about the limited partnership and its assets, which are then subsequently reported to their relevant home taxation authority (thereby Irish Revenue would be able to inspect activity in relation to any Irish partners). In addition, as the AIFM is a regulated entity, its documentation is subject to inspection by its supervisory authority.

In addition, we would note that creditors are typically very close to the relevant limited partnership and would receive audited accounts as part of due diligence and ongoing lending relationships.

The above is consistent with the approach taken with respect to corresponding limited partnership fund vehicles in the UK, France and Germany²⁴ where there is no requirement for AIF limited partnerships restricted to professional investors to file financial accounts with a registrar in addition to the filings already taking place to regulatory authorities under the AIFMD and local requirements. We concur that this is a proportionate approach and that Ireland should keep consistent with European peers.

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

We have no objection to the Registrar having powers to remove and strike-off limited partnerships from the register and further elaborate in Question 10.

²³ S.I. No. 257/2013 - European Union (Alternative Investment Fund Managers) Regulations 2013

²⁴ The comparable fund vehicles are the 1907 LP in the UK, the société de libre partenariat (“SLP”) in France and the Kommanditgesellschaft (“KG”) in Germany.

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

Where a limited partnership is dissolved it should be wound up by the general partners. However, there are no provisions in the 1907 Act for the Registrar to enquire whether a limited partnership is active or to remove limited partnerships from the register, whether through inactivity, enforcement action or dissolution. Under the Companies Act 2014, the Registrar has a range of powers to remove and strike-off companies from the companies register, voluntarily and involuntarily. The consequences of involuntary strike-off are significant and include:

- The assets of the company become the property of the State on dissolution of the company.
- It ceases to exist as a legal entity as and from the date on which notice of its strike-off is published in the CRO Gazette.
- The protection of limited liability is lost with effect from that date.

In principal and on the basis that it is essential that the public Register should contain information that is up to date and accurate, we would not object to the Registrar having the legislative powers to remove or strike off limited partners (“**LPs**”) which have been dissolved, subject to enforcement action or deemed to have ceased operations or business activity by virtue of inactivity by the Registrar; provided that appropriate legislative protections are put in place, including safeguarding the limited liability status of limited partners in the event of strike off and addressing the impact of striking off a LP in error.

It will be crucial to ensure that all general partners (“**GPs**”) and LPs are given due notice that a LP is being considered by the Registrar for removal or strike off. LPs should be informed, in addition to the GPs. Consideration should also be given to what safeguards will be put in place in applying this notification procedure to historic limited partnerships that have been registered for many years, given that the partnership legislation was first enacted in 1907. Appropriate warnings, including a clear timetable setting out when the removal or strike off procedure was commenced and specifying the impact on the limited partnership's residual property and rights following removal or strike off, should be made available to such notice parties.

In addition, there should be a clear restoration process for strike off made in error, whereby the Registrar will be permitted to restore a limited partnership to the register where the limited partnership was determined to have been struck off in error. We would recommend that safeguards similar in nature to that in place for striking off limited companies, with appropriate amendments, should be put in place. The Registrar should be obliged to complete checks to ensure that limited partnerships are not seeking a strike off inappropriately (for example, requiring that the limited partnership has not traded or changed name within a specified period before the strike off application was submitted and seeking confirmation that assets have not been disposed of inappropriately).

The introduction of a mechanism to allow limited partnerships to be removed or struck off the register by the Registrar for inactivity would be welcomed, provided that the Registrar would only be permitted to exercise such powers in clear and transparent circumstances (for example, failure to submit material filings or to respond to queries from the Registrar over a substantial period of time). It should not be permitted for the Registrar to exercise such significant powers for administrative failures by the GP, where alternative powers may be best utilised by the Registrar (e.g. administrative penalties). In addition, the impact that this new mechanism would have on historic limited partnerships would require thoughtful consideration. However, the removal of dormant partnerships would provide greater clarity from a statistical perspective in relation to the use of the partnership regime. In the event that there is a difference of opinion in relation to the status of a limited partnership, there should be a recourse mechanism made available to permit the Irish courts system to make a determination on the matter.

We would also note, in the context of investment funds, that the Central Bank undertook a review of its registers of authorised investment funds several years ago and struck off a number of funds it found to be dormant after a detailed procedure of notification and consideration. We would suggest that if strike off powers are granted, as part of DBEI's considerations for the necessary process in relation to historical limited partnerships, the Central Bank's process may provide some relevant assistance in developing such a programme.

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

As we have highlighted earlier in this response, the 1907 Act is substantially in need of significant revision and we think that the recent UK LP Fund Reforms and UK LP Reforms provide a good basis on which to update the 1907 Act. In addition to the general updating of the structure and the regime around it, of particular interest to Irish Funds was the creation in the UK of a specified category of limited partnership for investment funds – the Private Fund Limited Partnership²⁵ (“PFLP”) that came into existence on 6 April 2017. We would propose an Irish “AIF Limited Partnership” regime along similar lines.

The key advantages of the PFLP are:

- A PFLP benefits from a "white list" of permitted actions which limited partners in the PFLP can take without being regarded as participating in the management of the limited partnership and so losing their limited liability. This includes, among other matters, voting on amendments to the limited partnership agreement, appointing representatives on a limited partner advisory committee, and approving action proposed by the general partner to be taken on investments. The white list is not intended to change the general principle that limited partners cannot actively participate in the management of the limited partnership. However, it provides welcome

²⁵ See [“Proposal on using Legislative Reform Order to change partnership legislation for private equity investments: summary of consultation responses”](#), HM Treasury, March 2016.

clarity that certain matters customarily reserved for limited partners in PFLPs will not cause those limited partners to risk their limited liability.

- Like the Irish legislation, the English version of the 1907 Act requires limited partners to make capital contributions to the limited partnership for which the limited partner is liable until the end of the life of the partnership (even if that limited partner has withdrawn from the partnership). As a result, the market practice in the industry has been to utilise a “loan capital split”, whereby a limited partner makes a small capital contribution to the partnership, with the bulk of the partner’s commitment being advanced as an interest-free loan. The PFLP no longer makes this a necessity as (for those PFLPs registered from 6 April 2017) (i) partners are not required to make a capital contribution and (ii) the requirement to return any capital contributions withdrawn prior to the end of the life of the partnership does not apply. For PFLPs registered before 6 April 2017, limited partnerships formed prior to this date will continue to be subject to the previous regime.
- A PFLP is exempt from the administratively cumbersome requirement that exists for an existing English limited partnership requiring any assignments of limited partnership interests to be advertised in the London Gazette.
- A PFLP benefits from a right given to limited partners to appoint a person to wind up the partnership if the general partner is unable to do so.
- A PFLP is also exempt from certain statutory duties imposed on limited partners not to compete with the limited partnership and to render accounts and information of things affecting the partnership to any limited partner. Such obligations usually need to be specifically excluded in the limited partnership agreement for English limited partnerships.

In addition to the above amendments, we think that the following amendments should also be made to the Limited Partnerships Act 1907:

- Generally, the legislation requires amendment to consolidate all changes made to the 1907 Act via other legislation (e.g. references to the United Kingdom which should be to the State or Ireland, references to hard labour sentencing, etc.).
- Removal of the requirement to limit the partnership to 20 limited partners (and all other extended limitations provided under the Companies Act). The requirement to limit a partnership to 20 limited partners was relevant at the time of enactment in 1907 because at that time each partner in a limited partnership would have to be sued individually. This limit ensured it was not unwieldy to sue each partner individually; however, the Rules of the Superior Courts have long since been amended to provide that a partnership can be sued in the name of the firm. As a limited partnership can be

sued in the name of the firm, such a requirement is unnecessary and prohibitive. We would note that this requirement was removed from the legislation in the UK in 2002.²⁶

- Any requirements to update information in relation to the partnership, if not otherwise addressed as set out in this response, should be amended to extend the notification timelines to be more in line with that of Companies, noting that in most cases the requirement is 7 days whereas companies are 14 or 21 days.
- The failure of a general partner to register the partnership as a limited partnership should not render it a general partnership. We would suggest that, as in the UK²⁷, this consequence be removed as it is disproportionate to the failure of registration and could be handled via other means such as penalties against the general partner.

Additionally, there are a number of proposed amendments to the Investment Limited Partnerships Act 1994 on which Irish Funds is engaging with the Department of Finance. Certain of these amendments would also be of relevance to the updating of 1907 LPs. The Department of Finance is currently considering such amendments with a view to preparing draft legislation. Irish Funds would welcome the opportunity to discuss such proposals with DBEI.

²⁶ Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002/3203 art. 3

²⁷ Legislative Reform (Limited Partnerships) Order 2009/1940 art. 8