

Fund Finance Friday



Irish 1907 Partnership Considerations

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While advising on cross-border financings involving Irish funds, a type of Irish vehicle we see used in fund structures is a limited partnership formed under the Irish Limited Partnerships Act, 1907 (the **Act**) (an **Irish 1907 LP**). Irish 1907 LPs are used as investment vehicles by fund managers for a number of reasons, including their unregulated nature, the fact that they are generally accepted as tax transparent entities and, from a more practical perspective, investor familiarity with other similar limited partnership structures, such as English, Cayman and Delaware limited partnerships. Furthermore, given that Irish 1907 LPs are constituted by a limited partnership agreement (**LPA**) (and do not require authorisation by a regulator), they are typically faster to establish and cheaper to run than other regulated fund structures.

A feature of the Irish 1907 LP is that the names of the limited partners (**LPs**) and the respective amount of each LP's capital contributions are public and there is a requirement under the Act that a filing must be made with the Irish Companies Registration Office (the **Irish CRO**) within seven days of a change to the sum contributed by an LP. The consequences of not making these filings within the requisite timeframe are quite stark for what could be considered quite an administrative statutory obligation and include penalties and / or loss of limited liability status by the LPs. As a result, Irish LPAs have evolved to include provisions whereby the limited partnership agrees that contributions by an LP shall not be recognised as a capital contribution until all necessary filings are made with the Irish CRO and, until that time, monies received by the GP shall be held on trust for the relevant LP (the **Relevant Provision**).

While the Relevant Provision provides a neat solution for the Irish 1907 LP and its day-to-day running, it presents a number of considerations where an Irish 1907 LP is a borrower or a security provider on subscription line or hybrid facilities where a credit provider looks to lend against the capital call rights of the 1907 LP and the associated capital contributions. When constructing a security structure where an Irish 1907 LP is an obligor, it is important to consider the following in connection with the Relevant Provision:

- **Has the LPA been drafted in such a way that it is clear that the Relevant Provision only extends to capital contributions by the LPs (and not loan contributions)?** There is no requirement under the Act to make filings in connection with loan contributions and, in a well drafted LPA, there will be a clear distinction between capital

contributions and loan contributions (and that the filing obligation should only extend to the former) in so far as they relate to the total commitments of an LP. This is worth noting as, due to clawback concerns, LPs generally contribute only minimal capital (eg, 0.0001%), with the rest going in as debt (which can be subordinated where third-party financing is put in place);

- **Is there an obligation on the GP under the LPA that it must make all necessary filings on behalf of the Irish 1907 LP?** This is important as credit providers / secured parties should obtain a covenant from the GP that it will carry out its obligations under the LPA and a broad power of attorney in favour of the secured party that the secured party may take any action that the GP is obliged to take where the GP has failed to do so. It may be worth clarifying that these actions should extend to making any necessary filings with the Irish CRO so it is clear that, in an enforcement scenario where the secured party is exercising the GP's capital call rights, the secured party may also make any relevant filings with the Irish CRO in order to 'perfect' the contributions from the LPs (and ensure that they are not subject to a trust); and
- **Is flexibility included in the LPA for contributions to be made by LPs into a partnership account or another account notified by the GP to the relevant LP?** During the life of a financing, the GP will typically covenant that all contributions are made into an account secured in favour of the credit provider, however, where such credit provider is enforcing on a loan it is helpful if there is flexibility such that contributions can be made directly to an account of the secured party to avoid any argument that the relevant contribution could be subject to a trust arrangement.

While much of the above is taken into account more generally when credit providers diligence fund structures and security agreements are typically drafted in a way that there are robust protections in place for credit providers in any event, it is worth bearing the above in mind to ensure that credit providers are clear in terms of the route to enforcement in a distressed situation.

The **Matheson Fund Finance team** has extensive experience advising sponsors, managers and lenders on fund finance transactions. For more information, please contact a member of the Matheson Fund Finance team.