Venture Capital and Private Equity in Ireland

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IVCA
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The Irish Venture Capital Association is the representative organisation for venture capital and private equity firms in Ireland. Irish venture capital and private equity firm have invested over €5bn in Irish SMEs in recent years. The IVCA has prepared this note in conjunction with Matheson, Ireland's largest law firm. Matheson is Ireland's leading legal firm for investment management in terms of Assets Under Management, representing 31% of the Irish market.

Activity levels in global markets have remained high during 2020 and in Ireland, despite the challenges caused by Covid-19, venture capital and private equity funding into Irish SMEs grew by 13% in 2020 to €925m in 2020, compared to €820m the previous year.

For 15 years, the IVCA has collected data that provides information on the impact of venture capital on Ireland's job creation and economic growth. This body of research shows that the industry creates high calibre jobs and generates significant export sales growth. It plays a critical role in driving innovation by investing in research and development. The more recently established domestic private equity firms have broadened the funding options to Irish SMEs – particularly those undergoing generational changes in ownership or consolidating. There are now many more options for owners seeking liquidity than selling their business.

The Irish Government recognises that domestic venture capital and private equity activity, by eploying capital efficiently to emerging technologies, results in the creation of thousands of high calibre direct jobs with significant downstream impact on indirect jobs and in billions of euros in revenues and exports. In recognition of this positive economic impact. Government has been pro-active and committed, through Enterprise Ireland, up to €175m as a cornerstone investor to venture capital funds under the Seed & Venture Capital Scheme 2019-2024. It is anticipated that during these years the venture capital and private equity industry will leverage this commitment by a multiple of four to five times. The sector has been further underpinned by significant support from the Ireland Strategic Investment Fund. We welcome the recent changes to the ILP and are confident that these changes will continue to enable the industry to thrive and continue to play its part in building companies, in driving entrepreneurialism and in supporting innovation.

Introduction

The Irish venture capital and private equity landscape changed considerably earlier this year with the launch of the enhanced Investment Limited Partnership ("ILP"). Ireland's existing leading regulatory framework for alternative investment funds has long had a gap in its offering, lacking a partnership structure suitable for venture capital and private equity. The enhanced vehicle remedies that and means that managers looking to domicile their partnership in Ireland have an attractive regulated vehicle available.

Features of the Irish ILP

Structure of the ILP

The ILP was modelled on partnerships seen in other jurisdictions like Luxembourg and the UK. It does not have separate legal personality and it is formed by means of a limited partnership agreement ("LPA") entered into by one or more general partners (each a "GP") and by one or more limited partners (each an "LP").

The GP is charged with and is responsible for the management, control and operation of the ILP and of its investment activities. The GP also is liable for the ILP's debts and obligations. The LPs, on the other hand, have no role in the conduct of the ILP's business and are generally not liable for the debts or obligations of the ILP beyond the amount they contribute or agree to contribute to the ILP. LPs can lose that limited liability where they participate in the management of the ILP but the legislation helpfully contains a safe habour provision, which lists activities LPs can without being considered to be involved in the conduct of the ILP's business. These activities include serving on the ILP's advisory committee (if any), voting as an LP on various matters and consulting with and advising the GP with respect to the business of the ILP.

The ILP itself is flexible as regards using additional structural arrangements such as feeder vehicles, parallel vehicles, co-investment vehicles, subsidiaries and holding companies, all of which are possibilities.

Regulatory status

A key feature of the ILP is the fact that it is regulated by the Central Bank. There are two regulatory authorisations available, RIAIF and QIAIF, with the QIAIF (Qualifying Investor AIF) being the most suitable for venture capital and private equity due to the great flexibility it allows as regards asset classes, investment strategies, leverage and liquidity. The QIAIF regime also benefits from the Central Bank's fast track authorisation process, whereby the ILP can be authorised the next day following the submission of final documents.

The QIAIF may only accept investors who meet either the MiFID II professional client criteria or other specified qualifying criteria and who commit at least €100,000. There is an exception for certain individuals connected with the management of the ILP, something that is useful when it comes to structuring for carried interest.

Marketing

Where an authorised alternative investment fund manager is appointed to the ILP, it benefits from the AIFMD marketing passport, which allows the ILP to be sold to professional investors across the EU using a simple notification process. Absent the passport, the ILP must be sold using private placement regimes or reverse solicitation.

Typical venture capital / private equity features

The ILP legislation and related Central Bank guidance provide for a number of features which are typical in venture capital and private equity funds, such as:

- Capital accounting
- Capital commitments, capital contributions and drawdowns
- Distribution waterfalls and carried interest arrangements
- Defaulting LP provisions
- Closed-ended / finite term
- Excuse/exclude provisions
- Advisory committees
- Co-investment, parallel funds, subsidiaries, holding companies

Service providers

As a regulated fund, the ILP will require a number of service providers:

- Alternative investment fund manager: This can be based in the EU or outside the EU, but where based outside, the ILP will not benefit from the marketing passport;
- Administrator: This must be an Irish domiciled administrator;
- Depositary: This can be either a “full scale” depositary or a “real assets” depositary, both of which will be based in Ireland;
- Investment manager: The alternative investment fund manager can delegate portfolio management to an investment manager, which will typically be the fund sponsor. The investment manager can either be an EU MiFID authorised entity or a regulated non-EU entity (which has obtained Central Bank clearance to act for an Irish fund).

Tax transparency

The ILP is treated, from an Irish tax perspective, as tax transparent. This means that any income, gains or losses which arise at the level of an ILP will be treated, under Irish tax rules, as arising or accruing to each partner of the ILP as set out in the ILP agreement.

Matheson

The IVCA has prepared this factsheet in conjunction with Matheson, Ireland's largest law firm. Matheson is Ireland's leading legal firm for investment management in terms of Assets Under Management, representing 31% of the Irish market.

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