



The reform of Irish limited partnerships: in whose interest?

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ABSTRACT

The Irish Government's approach to the regulation of limited partnerships (LPs) has for many years prioritised the narrow economic interests of the powerful financial services sector over businesses more generally and the broader public interest. This has created two significant problems. First, non-financial services LPs have missed out on important reforms. Second, LPs have been left open to abuse by wrongdoers, facilitating financial and other criminal offences. Both problems need to be solved if the Government is to fulfil the aims of Project Ireland 2040 to support enterprise generally, create regional growth, and reduce inequality. This article explains how this can be done, taking account of the current law, the draft Registration of Limited Partnerships and Business Names Bill 2024, the extensive vulnerabilities of the LP vehicle to abuse, and the reforms necessary to improve partnership law for legitimate businesses beyond the financial services sector.

Keywords: partners; limited partnerships; beneficial owners; corporate partners; corporate transparency; money laundering; Project Ireland 2040; ECCTA 2023.

INTRODUCTION

The Irish Government's current Bill to reform limited partnership (LP) law, the Registration of Limited Partnerships and Business Names Bill 2024 (the Bill), provides an important opportunity to balance conflicting interests. On the one hand are the interests of businesses (and the state in its economic role) in promoting entrepreneurship and facilitating economic growth. On the other are the interests of the public (and the state in its social role) in protecting employees,

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creditors and other third parties who interact with the business, in equitable taxation, and in preventing wrongdoing.¹

Compelling arguments have been made for the desirability of firms taking into account the interests of all stakeholders whose support is required for a viable business – not only financiers, but also customers, suppliers, employees and communities.² These have been referred to variously as pluralism, stakeholder theory, and corporate social responsibility (CSR). Stakeholder management is

based on a moral foundation that includes respect for humans and their basic rights, integrity, fairness, honesty, loyalty, freedom to choose, and assumption of responsibility for the consequences of the actions a firm takes.³

Similarly, pluralist approaches require the firm

to serve a wider range of interests, not subordinate to, or as a means of achieving, [member] value ... but as valid in their own right. This ... inevitably involves a need to balance potentially conflicting interests ... without the interests of a single group ([members]) being overriding.⁴

CSR has been succinctly defined by the European Union (EU) as ‘the responsibility of enterprises for their impacts on society’.⁵

However, it is not enough to leave firms to determine their own social and ethical responsibilities; if left to self-regulate they will at best capture the concept of social responsibility and minimise public

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- 1 Archie B Carroll, ‘Carroll’s pyramid of CSR: taking another look’ (2016) 1(3) *International Journal of Corporate Social Responsibility* 1–8; Lorraine E Talbot, ‘Enumerating old themes – Berle’s concept of ownership and the historical development of English company law in context’ (2010) 33 *Seattle University Law Review* 1201–1219; Daniel R Fischel, ‘The corporate governance movement’ (1982) 35 *Vanderbilt Law Review* 1259–1318, 1273; UK Company Law Review Steering Group, ‘Modern Company Law for a Competitive Economic: Final Report’ URN 01/942 and URN 01/943, vol I, pt I, ch 1 and ‘Modern Company Law for a Competitive Economy: The Strategic Framework – A Consultation Document’ (February 1999) para 5.1.14.
 - 2 R Edward Freeman, *Stakeholder Theory* (Cambridge University Press 2010) 24 and 26.
 - 3 R Edward Freeman, Jeffrey S Harrison and Stelios Zyglidopoulos, *Stakeholder Theory: Concepts and Strategies* (Cambridge University Press 2018) 3.
 - 4 UK Company Law Review Steering Group, ‘Strategic Framework’ (n 1 above) para 5.1.13.
 - 5 EU Commission, ‘A Renewed EU Strategy 2011–14 for Corporate Social Responsibility’ (Communication) COM(2011) 681 final, para 3.1. See further Lára Jóhannsdóttir and Brynhildur Davídsdóttir, ‘A literature review of the history and evolution of corporate social responsibility’ (2019) 4(1) *Journal of Corporate Social Responsibility* 1–23.

expectations of their behaviour, and at worst do nothing.⁶ As has been argued, '[d]esign of the law needs to recognise the importance of ... wider ethical ... issues about the behaviour and standards of participants in [firms]' and 'accountability to wider audiences'.⁷ It is therefore essential that LP legislation incorporates non-economic values to reflect these other interests;⁸ LPs

should be organized and operated to serve the interests of society as a whole, and ... the interests of [its members] deserve no greater weight in this social calculus than do the interests of any other members of society.⁹

On registration an LP obtains a certificate of registration or authorisation,¹⁰ and, with either, a veneer of international and legal respectability. This 'public facilitation' of the firm is 'justified by the state's interest in promoting the general welfare'¹¹ and so it 'is not strictly private; it is tinged with a public purpose', which includes 'the making of a contribution to the public life of its communities'.

This article argues that the Irish Government has to date failed to balance the conflicting interests of firms and the wider community in LP law and policy so as to achieve justice and 'enable every member of society to realise their full potential'.¹² In particular, it has prioritised not just economic interests over social and ethical interests, but the narrow economic interests of a powerful special interest lobby¹³ at the expense of businesses more generally as well as the broader public interest.¹⁴ That public interest includes the following: facilitating

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- 6 Rami Kaplan, 'Who has been regulating whom, business or society? The mid-20th-century institutionalization of "corporate responsibility" in the USA' (2015) 13(1) *Socio-Economic Review* 125–155.
 - 7 UK Company Law Review Steering Group, 'Strategic Framework' (n 1 above) paras 5.1.2 and 5.1.7.
 - 8 Mike Feintuck, 'Regulatory rationales beyond the economic: in search of the public interest' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 39.
 - 9 Henry Hansmann and Reinier Kraakman, 'The end of history for corporate law' (2001) 88 *Georgetown Law Journal* 439–468, 441; and UK Company Law Review Steering Group, 'Strategic Framework' (n 1 above) para 5.1.15.
 - 10 LPA 1907, s 13; ILP Act 1994, s 8(6).
 - 11 William Allen, 'Our schizophrenic conception of the business corporation' (1992) 14(2) *Cardozo Law Review* 261–281.
 - 12 Ewan McGaughey, *Principles of Enterprise Law* (Cambridge University Press 2022) 4, 88, 90–92 and 686–689.
 - 13 Erik P M Vermeulen, *The Evolution of Legal Business Forms in Europe and the United States: Venture Capital, Joint Venture and Partnership Structures* (Kluwer Law International 2003) 61–62.
 - 14 Elspeth Berry, 'Limited partnership law and private equity: an instance of legislative capture?' (2017) 19(1) *Journal of Corporate Law Studies* 105–135.

the carrying on of lawful businesses generally; promoting and preserving economic ‘goods’, including employment and the supply of goods/services; maximising tax revenue; combating crime; and at least maintaining the country’s reputation overseas for probity and the rule of law. As the Organisation for Economic Co-operation and Development (OECD) has noted:¹⁵

[a]t times there may be monopoly of influence by those that are financially and politically powerful, at the expense of those with fewer resources ... Public policies that are misinformed and respond only to the needs of a special interest group can ultimately lead to policies that do not always benefit societies.

The special interest lobby is financial services,¹⁶ particularly overseas investors,¹⁷ the very wealthy (involved in tax planning or hiding assets), and their professional advisors.¹⁸ It is well established that business organisation legislation ‘is influenced by interest groups’, and indeed the economic theory of legislation

assumes that legal rules are demanded and supplied in much the same way as other products [so that] legislatures have no incentive to adopt efficient provisions for firms that lack sufficient resources to lobby for laws.¹⁹

As a result, only firms which are more powerful than others, or perform collective lobbying through a representative body, are able to procure favourable legislation, at the expense of micro, small and medium-sized enterprises (MSMEs).²⁰ Indeed the Irish Funds Industry Association (Irish Funds) boasts that it ‘has contributed to and helped shape the development of Ireland’s regulatory and legislative framework’.²¹ Yet,

[i]t is by no means certain that a ... framework that meets the perceived interests of professionals is efficient and equally beneficial to other business firms, and SMEs in particular.²²

As Ruairí Ó Murchú, Deputy to the Dáil (member of the lower house of the Irish Parliament), said, financial services is ‘one industry with its own needs and interests ... [which] are not shared by the majority

15 OECD Council, ‘Recommendation of the Council on Transparency and Integrity in Lobbying and Influence’, OECD/LEGAL/0379, 3.

16 Mr S Brennan, Minister of State at the Department of Enterprise and Employment, Seanad Éireann debate, Tuesday 5 July 1994, vol 140, no 19.

17 Rialtas na hÉireann Government of Ireland, ‘Ireland for Finance’ 13.

18 Vermeulen (n 13 above) 67; and Richard L Abel, ‘Toward a political economy of lawyers’ (1981) *Wisconsin Law Review* 1117–1187, 1185.

19 Vermeulen (n 13 above) 61–62.

20 *Ibid* 63.

21 Irish Funds, ‘Why Ireland’ (March 2025).

22 Vermeulen (n 13 above) 67.

of [Irish] constituents'.²³ Equally, professional advisors are often financially dependent on such clients, and so self-interest may outweigh their obligations to society when persuading the legislature to act – or refrain from acting.²⁴

This imbalance has created two specific and significant problems, both of which need to be solved if the Government is to fulfil the aims of Project Ireland 2040 (principally comprising the National Planning Framework²⁵ and the National Development Plan 2021–2030),²⁶ which the Government describes as a

long-term overarching strategy to make Ireland a better country for all ... [that] supports business and communities across all of Ireland in realising their potential.²⁷

In particular, Project Ireland 2040 aims to:

- i) create a strong economy and support enterprise generally;²⁸
- ii) create 'more balanced growth' by strengthening rural economies, ensuring that regional cities grow sufficiently to function as realistic alternatives to Dublin and reversing the decline of rural areas and the shift of jobs and people towards the Dublin area;²⁹ and
- iii) reduce social disadvantage and inequality and improve the quality of life, including the quality of public services.³⁰

The Government has acknowledged that although 'Ireland has been outstandingly successful in attracting major foreign investment', in future it must 'give equal priority to a local enterprise economy'.³¹

23 [Dáil Éireann debate](#), Thursday 12 November 2020, vol 1000, no 6.

24 Abel (n 18 above) 1185; and Vermeulen (n 13 above) 65.

25 [Rialtas na hÉireann Government of Ireland, 'Project Ireland 2040: Draft First Revision to the National Planning Framework'](#) (July 2024) and 'Updated Draft Revised National Planning Framework' (November 2024) (see also the original 2008 version) ('Planning Framework').

26 [Rialtas na hÉireann Government of Ireland, 'National Development Plan 2021–2030'](#) ('Development Plan').

27 [Rialtas na hÉireann Government of Ireland, 'Project Ireland 2040'](#).

28 [Rialtas na hÉireann Government of Ireland, 'Planning Framework'](#) (n 25 above) 5–7, 161–163 (163–165 in the 'Draft First Revision' due to a pagination error) and 'Development Plan' (n 26 above) 6–7, 21–22, 91–95 and 167–168.

29 [Rialtas na hÉireann Government of Ireland, 'Planning Framework'](#) (n 25 above) 3, 5–7, 9, 16, 19–20, 25, 65–67 and 154–155 (156–157 in the 'Draft First Revision'); 'Development Plan' (n 26 above) 6–7 and 67–70 and '[Project Ireland 2040: Building Ireland's Future](#)' 3 and 5–6.

30 [Rialtas na hÉireann Government of Ireland, 'Planning Framework'](#) (n 25 above) 5–7, 9–10, 21, 81–97, 169–171; 'Development Plan' (n 26 above) 6–7, 20, 55–57, 137–157, and '[Building Ireland's Future](#)' (n 29 above) 2–10.

31 [Rialtas na hÉireann Government of Ireland, 'Building Ireland's Future'](#) (n 29 above) 6.

This means diversifying away from Dublin-focused financial services to support businesses in other sectors, particularly MSMEs. The possibility of a united Ireland by 2040,³² may also have implications for achieving the aims of Project 2040³³ and thus for resolving the problems created by the unbalanced development of LP law.

The first problem caused by the domination of policymaker and legislator time and attention by financial services³⁴ is that non-financial services LPs (and indeed general partnerships) have missed out on important reforms. This is despite the fact that the leading textbook on Irish partnership law noted in both 2000 and 2019 that the Limited Partnerships Act 1907 (LPA 1907) ‘would benefit from a substantial overhaul’.³⁵ This has disadvantaged both existing partnerships and potential entrepreneurs who might have formed or expanded a partnership had the law been reformed and is thus contrary to the aims of Project Ireland 2040.

The second problem caused by the prioritisation of financial services is that – unwittingly and indirectly, but very importantly – neglect of other interests has left loopholes in LP regulation.³⁶ This has enabled wrongdoers to abuse LP vehicles to facilitate crimes and other wrongdoing which, as the Irish Government itself has acknowledged,³⁷ is economically and socially harmful, and contrary to the aims of Project Ireland 2040 as set out above. Wrongdoers can use LPs to facilitate a variety of criminal activities, while bestowing no real economic benefit on Ireland. In recent years, LPs in Ireland and the United Kingdom (UK) have been used for criminal activities on an industrial

32 In the context of Project 2040, unification has been described as a ‘strong possibility’: Rural Policy Hub, ‘[Response to Ireland 2040 National Planning Framework Public Consultation Document](#)’ 3; ‘a possible reality’, Seán O Riordáin, ‘[Ireland 2040: An Island of Regions?](#)’ (Local Government Information Unity 7 March 2024); and ‘plausible’, Ivan Yates, ‘Irish unity is but a will-o-the-wisp ... the internal politics of Northern Ireland are chalk and cheese’ *Belfast Telegraph* (Belfast Tuesday 20 February 2018).

33 Rural Policy Hub (n 32 above) 3 and 15; Yates (n 32 above); O Riordáin (n 32 above).

34 Berry (n 14 above).

35 Michael Twomey, *Twomey on Partnership*, Maedhbh Clancy (ed) (Bloomsbury Professional 2019) para 28.11; Michael Twomey, *Partnership Law* (Butterworths 2002) para 28.12.

36 Elspeth Berry, ‘Partnership law: used, misused or abused’ (2021) 32(2) *European Business Law Review* 207–250.

37 An Roinn Dlí agus Cirt Department of Justice, ‘Review of structures and strategies to prevent, investigate and penalise economic crime and corruption: report of the Review Group’ (2020) 19.

and international scale,³⁸ including money laundering,³⁹ bribery and corruption,⁴⁰ tax evasion,⁴¹ child pornography,⁴² and drug and arms trafficking.⁴³ These abuses should concern both government and civil society, due to the impact of dirty money⁴⁴ on the property market, political influence and national security;⁴⁵ of the diversion or non-payment of tax; and of criminal activities such as terrorist financing⁴⁶ and drug trafficking on the streets of Ireland as well as overseas. As the International Monetary Fund (IMF) has warned: ‘Ireland faces significant and increasing threats from foreign criminal proceeds.’⁴⁷

The prioritisation of financial services, the resulting imbalance in regulation, and the abuses facilitated, are all paralleled in the UK where the relevant legislation has, until recently, been in almost identical terms to that of Ireland. This is important not only because Ireland may be able to learn from the UK’s experience and *vice versa*, but also because the wrongdoers have been able to switch easily between the two jurisdictions and so regulatory action – or inaction – in one jurisdiction may impact on the other. For example, the abuses started in Scotland,⁴⁸ presumably because Scottish LPs, unlike those in the rest of the UK or Ireland, possess separate personality and the advantages which flow from it (discussed in Section 4).⁴⁹ However, after the UK Government introduced a requirement for Scottish LPs to disclose their beneficial owners (known in the UK as ‘people with significant

38 Berry (n 36 above).

39 Transparency International and Bellingcat, ‘Offshore in the UK: analysing the use of Scottish limited partnerships in corruption and money laundering’ (*Bellingcat* 24 June 2017).

40 Caelainn Barr, ‘The Scottish firms that let money flow from Azerbaijan to the UK’ *The Guardian* (London 4 September 2017).

41 Nicholas Shaxson, *The Finance Curse* (Bodley Head 2018); An Roinn Fiontar, Trádála agus Fostaíochta Department of Enterprise, Trade and Employment (DETE), ‘Regulatory Impact Analysis: General Scheme of the Registration of Limited Partnerships and Business Names Bill 2024’ (RIA) (31 May 2024) s 1.1.

42 Kate Devlin, ‘Crackdown on tax haven firms after Herald investigation’ *The Herald* (Dublin 16 November 2016); David Leask, ‘Bid for talks to stop gangsters zero tax firms’ *The Herald* (Dublin 9 November 2016).

43 Beau Donelly and Brian Mahon, ‘Law changes needed to rein in limited partnerships, warns Leo Varadkar’ *The Times* (London 22 June 2022).

44 John Devitt, ‘Is Ireland a “safe haven” for the world’s dirty money?’ (*Transparency International Blog* 18 March 2021).

45 TI Ireland, ‘Illicit finance: implications for national security and the need for a new strategic response’ (21 March 2024).

46 IMF, ‘Ireland: Financial Sector Assessment Program – Technical note on anti-money laundering/combating the financing of terrorism’ (2022).

47 Ibid.

48 See, for example, Transparency International and Bellingcat (n 39 above).

49 Partnership Act 1890 (UK), s 4(2).

control' or PSCs),⁵⁰ the wrongdoing migrated to other parts of the UK, and to Ireland.⁵¹ The Companies Registration Office (CRO) reported that the number of LPs being registered was 'abnormally high':⁵² only 1000 Irish LPs were created between 1907 and 2014, but 2400 were created from 2015 to 2021,⁵³ and while 87 LPs were registered in Ireland in 2015, as PSC legislation was brought in for Scottish LPs, this increased to 531 in 2016 and 676 in 2016, resulting in a doubling of the total number in four years.⁵⁴ Investigative journalist Richard Smith described this as 'an ominous development ... [and] strongly synchronised with a similar rise in abusive LP structures in Britain',⁵⁵ and Alison Thewliss MP queried whether the soaring registrations of Irish LPs meant that 'those who are looking to exploit the system were just chasing round for the structures that they need'.⁵⁶

The worst may therefore be yet to come for Ireland because the UK's Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023) has introduced a much more substantial range of restrictions on LPs (coming into force in stages up to 2027), and the likely impact is a further migration of criminality to Irish LPs.

Meanwhile, the Irish Government is playing catch-up. It only started to consider LP reforms in 2019,⁵⁷ and the Bill did not appear until mid-2024, delays which have undoubtedly contributed to the spread of abuses to Ireland. Furthermore, as this article will demonstrate, the Bill omits many of the reforms necessary to combat those abuses – although so does the UK's ECCTA 2023, so the comparative advantage for wrongdoers may be minimised. Of course, many of the issues have a wider global resonance:

50 Alison Thewliss MP, HC Deb, 13 October 2022, vol 720, col 301.

51 Devitt (n 44 above); Ross Higgins and Beau Donnelly, 'Inside the secretive world of Irish limited partnerships' (*Bellingcat* 18 June 2022); Colm Keena, 'Partnership structure a shield against scrutiny' *Irish Times* (London 4 October 2021); 'Pandora papers: Ireland used as de facto "offshore" location' *Irish Times* (Dublin 4 October 2021); and 'Ireland marketed in Russia as offshore location with "impeccable reputation"' *Irish Times* (Dublin 8 October 2021); Daniel Murray, 'State draws up new legislation to reform Limited Partnerships' *Business Post* (Dublin 3 November 2019); and DETE (n 41 above) s 1.2.

52 CRO, 'Annual Report' (2018) 12; (2019) 11; and (2020) 17. Despite acknowledging a reduction in registrations from the high of 2017, CRO continued to repeat its concerns, and annual numbers of registrations have only decreased slightly since 2020, to 149 in 2024, still a significant increase from 87 in 2015.

53 Higgins and Donnelly (n 51 above).

54 Daniel Murray, 'Fast-track law could create more secret hiding places for dirty money' *Business Post* (Dublin 9 June 2019).

55 Quoted in Murray (*ibid*).

56 Alison Thewliss MP, Economic Crime and Corporate Transparency Bill, HC Deb, 25 October 2022, col 12.

57 Murray (n 51 above).

the increase in recent years of the number of partnership-type entities offering limited liability can be attributed to the legislatures' responsiveness to the interest group activities of professional services actors.⁵⁸

Yet there has been little attention paid in the legal literature in Ireland (or the UK) to the problems or their underlying causes, let alone to the possible solutions. This is despite the risk of harms having been recognised long ago; for example, UK law reformers noted in 1999 that

[i]n the course of generating wealth [firms] may cause various kinds of external harm of which society disapproves ... abuse damages efficiency and the credibility of business and of the productive system.⁵⁹

This article seeks to remedy this gap in the literature. Its focus is on Ireland, given the abuses there and the impending Bill, but comparison with the UK will also be included, principally because most LPs in both countries are governed by the Partnership Act 1890 as amended by the LPA 1907. These Acts were both enacted before Irish independence from the UK and have been retained by successive Irish governments. Amendments to the UK's version of the LPA 1907 in 2017, to produce an LP specific to the investment industry (the private fund limited partnership (PFLP)), had parallels in Ireland's Investment Limited Partnerships Act 1994 (ILP Act 1994). It is only with the reforms made by UK's ECCTA 2023 that the LPA 1907 has begun to look very different in the two countries.

What Ireland needs to do, therefore, is rebalance these competing interests by adopting reforms, both reforms to deter abuses and reforms to benefit all users of the partnership vehicle. These reforms are essential if the aims of Project Ireland 2040, as discussed above, are to be achieved.

This article will explain how this can be done, taking account of the current law, the Bill, and the reforms adopted in the UK. It first outlines the key features of the two types of Irish LP, and then, second, assesses the impact of the preference shown to the financial services sector. Third, it analyses the extensive vulnerabilities of the Irish LP to abuse, and proposes a range of solutions. Fourth, other reforms necessary to improve partnership law for legitimate businesses beyond the financial services sector will be discussed. Finally, a conclusion is drawn as to the most urgent legislative priorities for the Irish Government.

58 Vermeulen (n 13 above) 65, and see also 31.

59 UK Company Law Review Steering Group, 'Modern Company Law for a Competitive Economy: The Strategic Framework – A Consultation Document' (n 1 above) paras 5.1.40 and 2.6.

1 LPS IN IRELAND

LP vehicles exist across the world and are said to be ‘ubiquitous throughout common law jurisdictions’.⁶⁰ However, LP regulation is carried out almost exclusively by national authorities, and thus countries such as Ireland engage in regulatory competition to make their version of the LP vehicle the most attractive to investors.⁶¹

Ireland has two types of LP: an ordinary LP and an ILP.⁶² Ordinary LPs are governed by the Partnership Act 1890 as amended by the LPA 1907.⁶³ ILPs are governed by the Partnership Act 1890 and the ILP Act 1994; the LPA 1907 does not apply.⁶⁴

Both are formed of two or more persons carrying on business with a view of profit, at least one of whom must be a general partner and one a limited partner.⁶⁵ General partners manage the business and have unlimited personal liability for the debts of the partnership.⁶⁶ Limited partners’ liability is limited to their capital contribution, in return for them being prohibited from taking part in management of the LP.⁶⁷ An LP is ‘tax transparent’ – the LP itself pays no tax⁶⁸ and its profits are only taxed in the hands of its partners, through income or corporation tax.⁶⁹

An ordinary LP may carry on any trade, occupation or profession⁷⁰ and is formed by registration at CRO,⁷¹ although very little information has to be registered. Its limited partners are required to make a

60 DETE, ‘Update 7 June 2019: Submissions on the Review of the Limited Partnerships Act’ (*‘Responses’*) William Fry, 3.

61 Ocorian, ‘A guide to setting up your fund in Europe’ (nd).

62 There is some potential confusion on terminology because the acronym ‘ILP’ is sometimes used to denote an ordinary Irish LP rather than investment LP. Ireland also has a vehicle called an LLP but its use is restricted to partnerships of lawyers and it will therefore not be considered in this article.

63 LPA 1907, s 7.

64 ILP Act 1994, s 4(1) and (2).

65 Partnership Act 1890, s 1(1); the LPA 1907, s 4(2); and the ILP Act 1994, s 5(4).

66 LPA 1907, s 4(2); ILP Act 1994, s 6.

67 LPA 1907; ss 4(2) and 6(1); ILP Act 1994, s 6.

68 An LP which supplies taxable goods or services and whose turnover exceeds the threshold limits must register as a taxable entity for value added tax (VAT) purposes, and is then accountable for the VAT: Revenue C ain agus Custaim na h Eireann Irish Tax and Customs, ‘Who should register for VAT?’

69 Revenue C ain agus Custaim na h Eireann Irish Tax and Customs, ‘Notes for Guidance – Taxes Consolidation Act 1997 Finance Act 2025 edition: Part 43 Partnerships and European Economic Interest Groupings (EEIG)’ (December 2025); and ‘Collective investment vehicles’.

70 Partnership Act 1890, ss 1(1) and 45. The maximum limit of 20 partners is lifted for certain professions, including solicitors: Companies Act 2014, s 1435(c).

71 LPA 1907, s 5.

capital contribution, though there is no minimum amount.⁷² The LP's principal place of business must be in Ireland, but only at the time of first registration. The legislation contains only minimal rules for how LPs are run, and these can be overridden by contrary agreement of the partners. Ordinary LPs have barely benefited from modernising reforms until the advent of the current Bill, unlike ILPs.

An ILP's business must be the investment of its funds in property.⁷³ It must be registered with the Central Bank of Ireland⁷⁴ rather than CRO, and must supply more information than an ordinary LP in order to obtain registration, including its partnership agreement⁷⁵ and details of its beneficial owners.⁷⁶ It must also file an annual report, including audited accounts.⁷⁷ It must maintain its principal place of business and registered office in Ireland.⁷⁸ Its limited partners are not obliged by law to contribute capital and do not remain liable for any withdrawn capital.⁷⁹ An ILP must also be authorised by the Central Bank,⁸⁰ which requires it to have a depositary to safeguard assets,⁸¹ and for at least one general partner to either be authorised as a fund manager by the Bank or satisfy the Bank as to their competence and probity.⁸²

As will be explained in the next section, ILPs have enjoyed a number of advantages over ordinary LPs from the outset and have benefited from reforms since then, as a result of the influence exerted by the financial services industry and its professional advisors over several decades.

72 Ibid s 4(2).

73 ILP Act 1994, s 5(1)(a).

74 Ibid s 10.

75 Ibid ss 5(1)(a) and 11.

76 Ibid s 27A and the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 SI 110/2019 (extended to ILPs by Investment Limited Partnerships (Amendment) Act 2020).

77 ILP Act 1994, s 16.

78 Ibid s 12.

79 So long as the partnership has a positive net asset value at the time of withdrawal: *ibid* s 20(1)(a).

80 Ibid ss 5(1)(f).

81 Ibid ss 5(1)(c) and 11.

82 ILP Act 1994, s 8.

2 THE POLICY AND LEGISLATIVE PRIORITY GIVEN TO THE FINANCIAL SERVICES SECTOR

LPs have been described as ‘the legal basis of Ireland’s venture capital and private equity industry’⁸³ and, as has rightly been said, ‘there’s no interest group more rich and powerful than the rich and powerful’.⁸⁴

The policy

As discussed in the introduction to this article, the policy of the Irish Government has been to gain a competitive advantage by encouraging overseas investment and promoting financial services,⁸⁵ often without sufficient care for either genuine and wide economic benefit, or probity.⁸⁶ The leading textbook on Irish partnership law noted as early as 2000 that the number of LPs had increased ‘dramatically’ due to their popularity as investment vehicles,⁸⁷ and subsequently that one-quarter of all LPs registered by the end of 2017 had been registered during that year.⁸⁸ All bar one of the responses to the Government’s 2019 consultation on LPs⁸⁹ came from representatives of the investment funds community and their professional advisors, and all of those asserted the economic value of financial services – though the one ‘independent’ response, from a statutory advisory expert body, did not.⁹⁰

The results of this policy include low registration fees for all business vehicles, reduced regulation and transparency of LPs themselves and of trust or company service providers (TCSPs), and the ability to use both corporate and overseas partners. All of this is attractive to many legitimate businesses – but also to wrongdoers.

Despite Irish LPs in Ireland having been widely used to facilitate criminal activities as explained in the introduction, the Government’s

83 DETE (n 60 above) Irish Venture Capital Association (IVCA), Q1.

84 James S Henry, ‘The price of offshore revisited’ (Tax Justice Network July 2012), quoted by Oliver Bullough, ‘Pandora’s depressing déjà vu’ (*Coda Oligarchy* 6 October 2021).

85 Twomey (2019) (n 35 above) paras 28.17, 28.76; and Rialtas na hÉireann Government of Ireland, ‘Ireland for Finance’ (n 17 above) 2.

86 Berry (n 14 above), 112; cf DETE (n 60 above) Arthur Cox (referring to job creation at para 1.3 and economic value at para 2.2) and Irish Funds (2–3).

87 Twomey (2019) (n 35 above) para 28.13.

88 *Ibid* para 28.12.

89 An Roinn Gnó, Fiontar agus Nuálaíochta Department of Business, Enterprise and Innovation (DBEI), ‘Review of Limited Partnerships Act 1907’ (2019).

90 Submission of the Statutory Committee of the Company Law Review Group to the Minister for Business, Enterprise and Innovation in Response to the Consultation Paper of January 2019 on the Review of the Limited Partnerships Act 1907, 28 February 2019, app A3 to the 2018 Annual Report of the Company Law Review Group (CLRG).

focus on the investment industry has meant that the reforms necessary to combat these abuses have not been made. Indeed, the Irish Government's own national risk assessment complacently asserted that '[t]he overall risk of money laundering and terrorist financing associated with Irish [LPs] is judged to be comparable to or somewhat lower than in other jurisdictions', and that any such risk 'is mitigated as [LPs] must be registered', despite the fact that the registered information is minimal (as discussed in Section 3).⁹¹

Yet, as the IMF has noted, Ireland's growth as an international financial centre increases both the scale and the complexity of the risks.⁹² Transparency International Ireland (TI Ireland) commented similarly that 'Ireland does not have a clear assessment of the threat from corruption to its economic well-being, social cohesion or national security', as a result of which attempts to combat money laundering and corruption are 'more likely to be reactive and expedient'.⁹³ The chief executive of TI Ireland warned that 'weak rules' and transparency and regulatory oversight left Ireland vulnerable to money laundering, and that it was likely that Irish LPs were being used to launder the proceeds of the global drugs trade, tax evasion, sanctions-busting and corruption.⁹⁴

This policy has also meant that modernising reforms to LPs have focused on ILPs rather than ordinary LPs, and indeed some potential reforms have not been made at all due to a lack of interest, or actual opposition, from the financial services sector.

What is needed is for this policy to be properly balanced against the needs of other businesses and the community. As explained in the introduction to this article, the aims of Project Ireland 2040⁹⁵ include creating a strong economy and supporting enterprise generally, creating more balanced growth, and reducing inequality and improving the quality of life. This means that LP law must benefit all types of business, not just financial services, and that the wrongdoing facilitated by LP law must be combated.

91 An Roinn Airgeadais Department of Finance, 'National Risk Assessment Ireland: Money Laundering and Anti-Terrorist Financing' (April 2019) 76–77.

92 IMF (n 46 above).

93 TI Ireland, 'Safe Haven? Targeting the Proceeds of Foreign Corruption in Ireland' (2020) 22.

94 Donnelly and Mahon (n 43 above).

95 Rialtas na hÉireann Government of Ireland, 'Planning Framework' (n 25 above) and 'Development Plan' (n 26 above).

The legislation

The ILP Act 1994

Turning from the policy to the resulting legislation, the priority given to the financial services industry can clearly be seen in the creation of the ILP in 1994, which was ‘developed in consultation with the IFSC’⁹⁶ (the Dublin International Financial Services Centre). This was set up in 1987 as a location for a range of internationally traded financial services,⁹⁷ offering tax incentives⁹⁸ and light-touch regulation,⁹⁹ and has developed as a location for international fund administration.¹⁰⁰ ‘IFSC’ is now often used also as a generic term to refer to Ireland’s international financial services industry.¹⁰¹

Yet the risks of the prioritisation of financial services were already recognised in 1994, with the IFSC itself described as ‘more ... a tax shelter than an indigenous financial industry where skills are developed’¹⁰² and enabling money laundering.¹⁰³ Furthermore, there was ‘no way of measuring how many of the projects have been relocated there from elsewhere in the country and what tax is lost as a result’. The ILP legislation in particular was criticised as providing ‘inordinate possibilities for abuse’ and conferring no real economic benefit:

the last thing we need to encourage in terms of industrial policy is further incentives to invest in property or fixed assets as compared to investment in enterprise or risk projects.¹⁰⁴

Despite this, the ILP was accorded significant advantages over an ordinary LP from the outset¹⁰⁵ and has since been described as ‘the vehicle of choice for private capital’.¹⁰⁶

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- 96 Minister of State at the Department of Enterprise and Employment Mr S Brennan, Dáil Éireann debate, Tuesday 21 June 1994, vol 444, no 1.
- 97 ‘Ireland’s International Financial Services Centre’ (IFSC); and the Institute of Bankers in Ireland (IOB), ‘The Irish funds industry – a history’ 6.
- 98 Laurence Murphy, ‘Financial engine or glorified back office? Dublin’s International Financial Services Centre going global’ (1998) 30(2) *Royal Geographical Society* 157–165, 160 and 162–163; Fiona Reddan, *Ireland’s IFSC: A Story of Global Financial Success* (Mercier Press 2008) 70–71 and 226–227; IOB (n 97 above) 8, 13 and 18; and Nik Pratt, ‘25 years of Irish Funds’ (*Funds Europe* 14 November 2016).
- 99 Murphy (n 98 above) 157 and 160; and Reddan (n 98 above) 71 and 255–256.
- 100 Murphy (n 98 above) 160; and Reddan (n 98 above) 151–156 and 160.
- 101 Finance Dublin.com, ‘The IFSC story’.
- 102 Deputy Mr Rabitte, Dáil Éireann debate, Tuesday 21 June 1994, vol 444, No 1.
- 103 Deputy Mr R Bruton, Dáil Éireann debate, Tuesday 21 June 1994, vol 444, no 1.
- 104 Minister of State at the Department of Enterprise and Employment Mr S Brennan, Dáil Éireann debate, Tuesday 21 June 1994, vol 444, no 1.
- 105 IOB (n 97 above) 14.
- 106 Murray (n 54 above).

The advantages include, first, that there are no restrictions on the number of partners, whereas most ordinary LPs are subject to a 20-partner limit.¹⁰⁷

Second, little ILP information registered with the Central Bank is disclosed publicly, unlike information registered by ordinary LPs at CRO. Secrecy is a key vulnerability of LPs to abuse (as discussed further in Section 3).

Third, an ILP can continue in existence despite a change in the general partners,¹⁰⁸ whereas any such change will dissolve an ordinary LP.¹⁰⁹

Fourth, an ILP limited partner who takes part in the conduct of the business, and who in an ordinary LP would therefore lose the benefit of limited liability, only does so if the third party with whom they dealt believed them to be a general partner.¹¹⁰ Limited liability makes LPs vulnerable to abuse (as discussed in Section 3).

Fifth, limited partners in an ILP (but not an ordinary LP) benefit from the protection of a 'safe harbour' list of activities, which are stated not to constitute taking part in the conduct of the business (discussed further in Section 4). Limited partners who do take part in the conduct of the business lose their limited liability,¹¹¹ and so this provision enables them to participate in the listed activities without this risk.¹¹²

Sixth, the ILP Act 1994 expressly provides that a partnership may be an ILP limited partner¹¹³ – something which, in the absence of equivalent express provision for ordinary LPs, is not possible for their limited partners. This is because an LP can only be formed 'between persons',¹¹⁴ and partnerships do not have legal personality. Again, this creates a vulnerability to abuse because partnerships themselves lack transparency (as will be discussed in Section 3).

107 LPA 1907 s 4(4). There are a number of exceptions to the limit; see s 1435(1)(c)(iv), CA 2014.

108 ILP Act 1994, s 37.

109 Partnership Act 1890, s 32 as amended by the LPA 1907, s 6.

110 ILP Act 1994, s 6(3).

111 *Ibid* s 6(2).

112 *Ibid* s 6(4).

113 *Ibid* s 5(2).

114 Partnership Act 1890, s 1. The Partnership Act and the LPA 1907 apply in both the UK and Ireland. Although both Acts were enacted prior to the establishment of the Irish state, both were carried over into the laws of Ireland (Twomey (2019) (n 35 above) paras 1.24, 1.26 and 28.2) and pre-1922 case law of the UK courts is treated as binding on Irish courts (*Murphy v Power* [1923] 1 IR 68; *MacCathaigh v Daly* [1985] IR 73; and Twomey (2019) (n 35 above) paras 1.27–1.32) unless it conflicts with the Irish Constitution or, in the case of pre-1890 case law, with the 1890 Acts itself, since the Act was not intended to be a complete codification of the predating case law.

The 2020 reforms to the ILP Act 1994

The prioritisation of financial services meant that the Government's 2019 consultation on LP reforms¹¹⁵ initially resulted in reforms only to the ILP Act 1994,¹¹⁶ not the LPA 1907, even though the consultation applied to all LPs¹¹⁷ and even though the resulting reforms in 2020 included a significant number which could have been, but were not, extended to all LPs. The Irish Funds Industry Association (IFIA) 'lobbied heavily' on the reforms,¹¹⁸ and the Department of Finance announced them as furthering Ireland 'as a top-tier global location choice for financial services' and 'allow[ing] Ireland to better compete for global private equity investment'.¹¹⁹

The reforms gave ILPs yet more advantages over ordinary LPs, and led to a considerably increased uptake of ILPs; of the 58 ILPs currently registered, 54 have registered since 2022.¹²⁰ These advantages include, first, the lifting of the statutory obligation on limited partners to contribute capital¹²¹ and, second, the expansion of the safe harbour list for ILP limited partners.¹²² Third, in the absence of contrary agreement, amendments to an ILP agreement may now be made by majority, instead of unanimity as remains the position for ordinary LP agreements.¹²³

The proposed reforms to ordinary LPs

Although the Bill applies to ordinary LPs, it reflects the well-established influence of the financial services sector. For example, as will be discussed in Section 3, its provisions on the disclosure of an LP's 'beneficial owners' – the people who ultimately own or control the LP – are restricted in scope, and the information which is to be disclosed will not be publicly available. This reflects the desire of the financial services industry for secrecy. The Bill also includes a provision that a corporate body may be a general partner, whereas the current legislation only

115 DBEI (n 89 above).

116 Investment Limited Partnerships (Amendment) Act 2020.

117 DBEI (n 89 above).

118 Murray (n 54 above).

119 An Roinn Airgeadais Department of Finance, 'Investment Limited Partnership (Amendment) Bill 2020 passes all staged of Oireachtas following approval by Dáil Éireann' (Press Release 18 December 2020). See also Maedhbh Clancy, 'Limited partnerships – time for long-awaited reform' (2020) *Commercial Law Practitioner* 192, 193.

120 Central Bank of Ireland, 'Registers of Alternative Investment Funds: Authorised Investment Limited Partnerships, Investment Limited Partnerships Act, 1994 as at 26 May 2025'.

121 ILP Act 1994, s 20.

122 *Ibid* s 6(4).

123 *Ibid* s 11.

provides that a corporate body may be a limited partner.¹²⁴ This would benefit the financial services industry by confirming the lawfulness of the practice of using corporate bodies as general partners in financial structures (to manage tax liabilities and the risk of personal liability, and to provide secrecy for the participants).

The impact

The influence of the policy to favour financial services has meant both that the serious abuses of LPs have not been combated, and that law-abiding LPs have missed out on reforms which could benefit ordinary businesses. It is true that the consultation process ahead of the draft Bill attracted only one response not from the financial services industry or its professional advisors. However, there were relatively few responses, and interests beyond financial services, for example family businesses who often utilise LPs for succession and tax planning, are inevitably difficult to mobilise effectively.

First, as already discussed, the Government's LP reform agenda in recent decades has focused on introducing, and then updating, ILPs, at the behest of the financial services industry. As Deputy Ruairí Ó Murchú noted of the 2020 reforms:

It was strange that this legislation found its way into the programme for Government at a time of ... so many other pressing social issues ... That this legislation made it to the front of the queue, and given the revolving door between power and industry, questions are obviously raised ... that is why lobbying legislation must be overhauled, updated and improved ... This is not an industry in need of help at this critical [Covid pandemic] time.¹²⁵

However, although the financial services industry is much less interested in ordinary LPs, many of the ILP provisions could and should be applied to ordinary LPs, either to benefit LPs beyond the investment industry, or to combat the abuses of LPs. Examples of the former include the removal of the 20-partner limit, continuity on a change of general partner instead of automatic dissolution of the LP, and the protective provisions for limited partners known as 'safe harbour' provisions. Provisions which could combat the abuses include disclosure of beneficial owners, requiring a registered office and principal place of business in Ireland, and the appointment of inspectors to investigate an LP where fraud or other wrongdoing is suspected. These will be discussed further in Sections 3 and 4.

124 Bill, Head 17(4), and LPA 1907, s 4(4).

125 Dáil Éireann debate, Thursday, 12 November 2020, vol 1000, no 6, on the Investment Limited Partnerships (Amendment) Bill 2020 (Seanad): Second Stage. See also Berry (n 14 above).

Second, some potential reforms have been omitted entirely, either because the financial services sector objects to them or, at least, because it is not interested in them, for reasons which will be considered in sections 3 and 4. They include both provisions which would combat abuses, for example restrictions on the use of corporate partners; and provisions which would benefit ordinary LPs, for example granting them separate personality and enabling winding-up in the event that there is no general partner to do so. Financial services objections were clear when the UK first proposed ECCTA 2023 to combat abuses; ‘the important collateral damage that might harm ... legitimate ... users’ needs to be weighed in the balance’,¹²⁶ including ‘the time [and] ... unnecessary compliance costs’ and the effect on ‘the competitiveness of the UK and its attractiveness as a location for investment’.¹²⁷

Third, some of the advantages given to ILPs could in fact facilitate abuses by them. Although it must be hoped that ILPs, being regulated directly by the Central Bank, are less prone to abuse, this is simply not clear. The Bank discloses little information about the ILPs that it has registered, and ILPs are ‘yet another complex investment vehicle with vulnerability to tax exploitation and even money laundering’.¹²⁸ As Deputy Ged Nash noted during the debate on the 2020 ILP reforms:

rules are one thing but enforcement is another. We know only too well where turning a blind eye here and applying a light touch there can bring our society and economy.¹²⁹

For example, ILPs, unlike ordinary LPs,¹³⁰ are permitted to use partnerships as their limited partners.¹³¹ This reduces transparency and thereby facilitates wrongdoing because only minimal information about partnerships is publicly available (as discussed in Section 3). This is particularly concerning as the Bill appears to extend this provision to ordinary LPs.¹³² The risks are demonstrated by two Scottish LPs

126 Simon Witney, ‘Travers Smith’s alternative insights: Changes to UK limited partnership law’ (2 December 2022).

127 British Private Equity and Venture Capital Association (BVCA), ‘BVCA response to BIS Discussion Paper “Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business”’ (July 2013).

128 Murray (n 54 above).

129 Dáil Éireann debate, Thursday 12 November 2020, vol 1000, no 6, on the Investment Limited Partnerships (Amendment) Bill 2020 (Seanad): Second Stage.

130 Partners in ordinary LPs (and general partnerships) must be ‘persons’ (Partnership Act 1890, s 1) and thus partnerships cannot be partners because they lack legal personality.

131 ILP Act 1994, s 5(2).

132 Bill, Head 34.

alleged to be associated with corruption in Uzbekistan¹³³ which declared two Irish LPs as their beneficial owners.¹³⁴ Similarly, Irish LPs have been found to have Scottish LPs as their beneficial owners, resulting in ‘a nesting doll of different companies, and we can never get to the centre of it and find out who really is in charge’.¹³⁵

3 COMBATING THE ABUSES: VULNERABILITIES AND SOLUTIONS

As this section will explain, there are vulnerabilities to abuse both in Ireland’s business framework generally, and in its regulation of LPs in particular. However, one of the main factors behind both is the prioritisation of financial services. In order to combat the abuses, it is therefore necessary to rebalance the competing interests of the financial services industry as against other businesses and the wider public, to reduce the influence of the former and increase that of the latter. Indeed, the existence of the Bill shows that the Government has recognised the need for rebalancing in the light of the aims of Project Ireland 2040.¹³⁶

There are, of course, trade-offs inherent in achieving a balance between what is good for businesses, and what is good for the wider community; ‘the same factors that make [a country’s business] framework successful make it attractive to exploitation’.¹³⁷ But both Project Ireland 2040 and the extent of the abuses means that rebalancing is now a matter of urgency, and this section will propose a range of solutions to the vulnerabilities which could achieve this rebalancing.

Irish business organisations generally

CRO’s limited powers and insufficient fees

There are two vulnerabilities associated with CRO. One is that the registrar has no powers or duties to query suspicious filings for ordinary

133 Kristian Lasslett and Uzbekistan Forum for Human Rights, ‘*Out of the cauldron, into the fire?: Risk and the privatisation of Uzbekistan’s cotton sector*’ (*UzInvestigations* June 2020) 16 and 18.

134 Richard Smith, ‘*Never mind the Pandora papers: why secrecy still rules in the UK*’ (*OpenDemocracy* 6 October 2021).

135 HL Deb, 2 December 2021, vol 704, col 1140.

136 Rialtas na hÉireann Government of Ireland, ‘*Planning Framework*’ (n 25 above) and ‘*Development Plan*’ (n 26 above).

137 UK HM Treasury, ‘*National risk assessment of proliferation financing*’ (23 September 2021).

LPs,¹³⁸ or to verify the identity of partners or TCSPs who are filing information. This means that the register is liable to be unreliable, which facilitates wrongdoing¹³⁹ because it reduces transparency for those doing business with the LP, as well as investigators and enforcement agencies.

The Bill does propose increased powers to enable the registrar to challenge the veracity of registered information, but no duties on it to do so.¹⁴⁰ It also enables a limited degree of identity verification; all partners and anyone registering information must supply an Irish Personal Public Service Number (PPSN) or ‘such other information concerning their identity as stands determined by the Registrar’.¹⁴¹ More rigorous proof of identification could be required, for example a notarised sample of the general partner’s signature;¹⁴² and there is also a potentially ‘significant’ problem of inconsistencies between the details attached to a PPSN and the details already held by CRO.¹⁴³ The transposition of a recent EU Directive¹⁴⁴ will also require CRO to exercise more control over the information registered by ordinary LPs; the state must provide a procedure for a ‘legality check’ which includes ‘the formal and substantive control of the documents required under national law for the formation of such [LPs]’.¹⁴⁵

The other vulnerability is Ireland’s exceptionally low registration fee of €2.50, compared to £71 in the UK and an EU average of €300. The meaningful exercise of even the limited powers in the Bill and the Directive would require a substantial increase in this.

138 The registrar only has power to reject documents which do not comply with the requirements of the CA 2014 or another relevant enactment (s 898), and this is a discretion rather than a duty.

139 John Mulligan, ‘CRO to be quizzed by Oireachtas committee as fake firms revealed’ *Irish Independent* (Dublin Friday 2 July 2021).

140 Bill, Heads 12 and 13.

141 *Ibid* Head 14.

142 John Mulligan, ‘Fraudulent company registrations and the state’s response’, 25, in Transparency International Ireland, ‘[Weak links: Irish corporate structures and illicit financial flows](#)’ (9 December 2024).

143 KPMG, ‘[Companies and their directors’ identity](#)’ (29 June 2022).

144 Directive (EU) 2025/25 of the European Parliament and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law, OJ L 2025/25.

145 Art 10(3) of Directive (EU) 2017/1132 (n 144 above) of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) OJ L 169/46, as amended by Directive (EU) 2025/25 (n 144 above). Art 10 is applied (by Art 7 as amended) to the companies listed in annex IIB, which lists Irish LPs (comhpháirtíochtaí teoranta).

Inadequate regulation of TCSPs

TCSPs have extensive power to market, form and operate LPs. Yet even the Irish Government has acknowledged that they are not robustly regulated,¹⁴⁶ because they

are often built using the same secretive procedures they employ on behalf of clients. They register in offshore tax havens, disguise their ownership, and set up offices that serve as nothing more than mailing addresses. The combination weaves a cloak of anonymity that makes business activity hard to track.¹⁴⁷

This creates a vulnerability because TCSPs are often complicit in forming or operating wrongdoing LPs:¹⁴⁸

high levels of competition in the TCSP sector likely creates vulnerabilities through the need to provide rapid registration services to customers, and the potential for poor [customer due diligence] this implies. The lack of resources available for [customer due diligence] training and [anti-money laundering] decisionmaking in smaller TCSPs exacerbates this problem.¹⁴⁹

Inadequate TCSP regulation is compounded by the minimal registration requirements for LPs. These make it easy for TCSPs to form multiple LPs on the same day,¹⁵⁰ and indeed some of the same TCSPs are implicated in multiple LP formations in both Ireland and the UK, including wrongdoing LPs.¹⁵¹ Most of the significant increase in registrations has been from a small group of TCSPs;¹⁵² over 1250 LPs formed between 2015 and 2021 operate from only three addresses.¹⁵³

146 Rialtas na hÉireann Government of Ireland, ‘Trust or Company Service Providers Risk Assessment: Update of Ireland’s National AML/CFT Risk Assessment’, ss 3 and 4.

147 Graham Stack, Jason Papakheli and Jonny Wrate, ‘Behind the Curtain’ (*OCCRP* 15 May 2019) and Rialtas na hÉireann Government of Ireland (n 137 above) 37–38; Rialtas na hÉireann Government of Ireland, ‘Planning Framework’ (n 25 above) 37–38.

148 Simon Carswell, ‘Over 2,000 offshore firms set up from home in Ranelagh, Dublin’ *Irish Times* (Dublin 14 June 2013).

149 HM Treasury and Home Office, ‘National risk assessment of money laundering and terrorist financing 2020’, paras 11.22–11.23; see also Rialtas na hÉireann Government of Ireland, ‘Trust or Company Service Providers Risk Assessment’ (n 146 above) 16–17, 45 and 49–50.

150 Indeed, in the UK, ECCTA 2023 has potentially worsened the situation by mandating that only TCSPs can form, and file on behalf of, LPs (ECCTA 2023, s 145).

151 Higgins and Donnelly (n 51 above).

152 DETE (n 60 above) CLRG, 7.

153 Beau Donnelly and Ross Higgins, ‘Irish partnerships “have become a mask for shady dealings”’ *Sunday Times* (London 19 June 2022) and ‘Has Ireland become a haven for scammers, launderers and pornographers?’ *Sunday Times* (London 19 June 2022).

The Department of Finance has acknowledged that TCSPs provide ‘complex services’ which

are attractive to those seeking to launder the proceeds of crime as they enable access to the financial system and can obscure the source of funds and the beneficial ownership of funds.¹⁵⁴

In one case, a TCSP acted as the initial limited partner of an LP on behalf of a client, an Asian national with business interests in Switzerland and the Cayman Islands, and another TCSP became a partner in its capacity as trustee for a company registered in the British Virgin Islands; even ‘[t]he TCSP could not adequately explain the reasons for the complexity of the arrangements’.¹⁵⁵ Despite this, TCSPs made only 15 out of 52,222 suspicious transaction reports (STRs) submitted to the Financial Intelligence Unit (FIU) in 2023.¹⁵⁶

Current regulation of TCSPs through anti-money laundering (AML) supervision – in the financial sector by the Central Bank, in the legal and accountancy sectors by their professional bodies, and otherwise by the Department for Justice (DJE) – is clearly inadequate to prevent abuses. It closely mirrors the well-established failings of the UK system, with a multiplicity of regulators operating inconsistent systems without sufficient expertise – or, in the case of the default state regulator, funding – to fulfil their mandate.¹⁵⁷ Indeed, the default regulator in Ireland (the DJE) charges TCSPs significantly less for supervision than its UK counterpart (HM Revenue and Customs (HMRC)).¹⁵⁸ The Financial Action Task Force (FATF),¹⁵⁹ the United Nations Office on Drugs and Crime (UNODC),¹⁶⁰ and TI Ireland have all raised concerns about the ability of the DJE and the professional bodies to assess risk and take enforcement action.

The Bill therefore needs to include improved substantive regulation of TCSPs, including ensuring that TCSPs are registered with an AML supervisor at the time of filing any documentation at CRO and that the

154 An Roinn Airgeadais Department of Finance (n 91 above) 55.

155 Rialtas na hÉireann Government of Ireland, ‘Trust or Company Service Providers Risk Assessment’ (n 146 above) annex 2, 49.

156 FIU Ireland, ‘STRs received at FIU (1995 to 2023)’.

157 Accountancy AML Supervisors’ Group (AASG), ‘AML alert: high risk behaviours and typologies associated with the TCSP sector’ (June 2023).

158 €130 total in Ireland, compared to £300 for each of the TCSP’s premises plus £150 for each staff member in the UK, and authorisation lasts for three years with the DJE, but only one with HMRC.

159 FATF, ‘Anti-money Laundering and Counter-terrorist Financing Measures: Ireland – Mutual Evaluation Report’ (2017).

160 UNODC (2021), ‘Country Review Report of Ireland: Review by Austria and Liechtenstein of the implementation by Ireland of Chapters II (articles 5–14) and V (articles 51–59) of the United Nations Convention against Corruption for the review cycle 2016-2021’, 114.

supervisor effectively supervises and enforces AML regulation. Both UNODC¹⁶¹ and TI Ireland¹⁶² have also recommended a single unified AML regulator for non-financial services TCSPs, and the IMF has noted that supervision is fragmented and thus inconsistent.¹⁶³ Indeed, the UK Government is now proposing a single TCSP AML regulator to take over from professional bodies and HMRC.¹⁶⁴

Unfortunately, the Bill merely requires a TCSP acting on behalf of an LP to provide its business address and evidence of registration with an AML supervisor.¹⁶⁵ The Regulatory Impact Analysis (RIA) for the Bill asserts that the provision of the address alone ‘ensur[es] compliance with relevant [AML] provisions’,¹⁶⁶ which is patently untrue; and even evidence of registration with an AML supervisor provides insufficient guarantees, as FATF, UNODC, the IMF and TI Ireland have all reported. For example, FATF has expressed ‘concerns as to the frequency and intensity of [DJE’s] inspections and its limited resources’ and noted that even the DJE ‘is aware that a number of entities within the sectors falling under its remit [including] ... TCSPs ... are not being supervised for AML ... purposes’.¹⁶⁷ The IMF has noted that ‘given the considerable expansion of the financial sector, an augmentation of resources and personnel would be necessary to maintain the current depth of supervisory engagement’, ‘suspicious transaction report (STR) filings in the sector remain dismally low’, and ‘[t]he supervision of professional gatekeepers is not commensurate with risk levels in the sector’.¹⁶⁸

Limited partnerships specifically

LP legislation enshrines a minimalist approach, imposing little regulation¹⁶⁹ beyond the requirements to register and have at least one general and one limited partner, the prohibition on management by limited partners, and the imposition of a general duty of good faith

161 Ibid 9 and 115.

162 TI Ireland (n 93 above) 33.

163 IMF (n 46 above) 5 and 14–15.

164 HM Treasury, ‘Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervision Regime: Consultation Response’ (October 2025) paras 2.9–2.12, and ‘Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) Supervision Reform: Duties, Powers, and Accountability Consultation’ (6 November 2025).

165 Bill, Head 23(4).

166 DETE (n 41 above) s 2.

167 FATF (n 159 above) para 314.

168 IMF (n 46 above) 4.

169 DETE (n 60 above) Law Society of Ireland, para 2.4; Irish Funds, 3–4; Maples Group para 1.1; Arthur Cox para 2; and Simmons & Simmons, 5.

between partners.¹⁷⁰ Although there is somewhat more statutory intrusion into ILPs (as discussed in Section 1), the legislation is still relatively minimal when compared with the Companies Act 2014 (CA 2014).

This lack of regulation provides considerable flexibility, but also creates loopholes which make LPs vulnerable to misuse by wrongdoers. The following sections examine these loopholes, and analyse ways in which they could be closed or reduced.

No disclosure of beneficial owners

One of the most significant vulnerabilities of an ordinary LP is that it is not required to disclose its beneficial owners – the people who ultimately own or control the LP.

This allows beneficial owners to avoid scrutiny by creditors, regulators, tax authorities, enforcement agencies, journalists, or civil society so they cannot be held accountable for wrongdoing by the LP and their assets are unavailable to creditors or enforcement agencies.¹⁷¹

Unsurprisingly, the absence of mandatory beneficial ownership disclosure is a selling point; for example, one TCSP advertises that:

Upon the registration of most of business entities in the United kingdom [sic], you will require to register information about the person with the significant control ... Anyway, when you set-up a limited partnership in Republic of Ireland [sic], you are exempt from such rules. You do not need to file information about the beneficiary owners [sic] or person with the significant control of your business.¹⁷²

In fact, secrecy of beneficial owners is by no means essential to legitimate businesses; not only are LPs in many other jurisdictions, including Scotland, Gibraltar and Malta, required to disclose their beneficial owners, Ireland itself requires ILPs to register their beneficial ownership details.¹⁷³ More importantly, it is liable to be disproportionately attractive to wrongdoers and tax avoiders.

FATF recommends that partnerships should be obliged to disclose their beneficial owners because of the associated risks of money laundering and terrorist financing, especially where there are corporate partners in overseas jurisdictions.¹⁷⁴ The inability to identify beneficial

170 *Flynn v Breccia* [2017] IECA 74, para 99.

171 Transparency International, 'CPI 2023: Trouble at the top' (30 January 2024).

172 Coddan, 'Limited partnership registration in Republic of Ireland'.

173 ILP Act 1994, ss 27A–27C, 28A–27C and 46–59.

174 FATF, 'Guidance on beneficial ownership of legal persons (recommendation 24)' (March 2023) 19.

owners is also a fundamental difficulty in the way of international action against tax havens.¹⁷⁵ As the head of TI Ireland has noted:

[t]here are few reasons to keep the real owners of investments secret other than to lend assurance to money launderers, corrupt officials and tax evaders that their money is safe ... Opaque structures like LPs and ILPs have the potential to attract a lot more dirty money into the jurisdiction.¹⁷⁶

The Bill therefore needs to include an obligation on LPs to disclose their beneficial owners – rather than just those of some of their partners. The effectiveness of such a requirement in combating wrongdoing can be seen in the significant reduction in the numbers of Scottish LPs being registered¹⁷⁷ and associated reports of wrongdoing after they were forced to disclose their beneficial owners.

The UK Government has advanced the nonsensical argument that since LPs (unlike companies) are not legally separate from their owners (discussed in Section 4), they cannot have beneficial owners or controllers. But, of course, all businesses must be owned and controlled by someone if they are to exist at all, and the Irish Government has accepted this logic by requiring ILPs to disclose their beneficial owners.

Unfortunately, the Bill only requires LPs to register the beneficial owners of non-European Economic Area (EEA) corporate partners,¹⁷⁸ and not of other corporate partners, or indeed of the LP itself.¹⁷⁹ The RIA for the Bill asserts that beneficial owners of EEA corporate partners are ‘ascertainable’,¹⁸⁰ but corporate bodies often fail to

175 Peter Alldridge, *What Went Wrong with Money Laundering Law?* (2016 Palgrave Macmillan) 70.

176 Murray (n 54 above) quoting John Devitt, Head of Transparency International Ireland.

177 Diogo Augusto, ‘[Revealed: the Edinburgh offices linked to secretive Scottish limited partnerships](#)’ (*The Ferret* 17 October 2021).

178 Bill, Heads 34–37.

179 Cf the requirements for corporate entities and trusts to register their own beneficial owners (European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 SI No 110/2019 and European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 SI No 194/2021). The underlying EU Regulation defines a beneficial owner as ‘any natural person who ultimately owns or controls a legal entity or an express trust or a similar legal arrangement’ (Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, OJ L 2024/1624, Art 2, para 1(28)), and the terms ‘legal entity’ or ‘similar legal arrangement’ might be interpreted as including LPs. See also the imposition of beneficial ownership disclosure obligations on ‘corporate and other legal entities’ in 4 AMLD (n 188 above) Art 30.

180 DETE (n 41 above) s 2.

register accurate information¹⁸¹ and, in any event, finding this information on an overseas register creates an additional obstacle for Irish regulators and enforcement agencies, as well as creditors and civil society. Furthermore, an LP may have its own beneficial owners which are different to the beneficial owners of its partners.

The Bill's proposed beneficial ownership regime therefore needs to be extended to the beneficial owners of the LP itself and of all corporate partners.

The Bill should also ensure that the regime for LPs does not transpose the failings of the regime currently applicable to ILPs (and other business organisations).

First, the beneficial ownership registers, including the Bill's new 'Register of non-EEA Partners of a Limited Partnership'¹⁸² to be held by the Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies, may not reliably disclose even the limited number of beneficial owners which are required to be registered because it is not clear that they are verified rigorously or at all. Ireland needs to demonstrate that it meets its obligations under EU law to 'put in place mechanisms' to ensure that its beneficial ownership register is 'adequate, accurate and current',¹⁸³ and under the UN Convention Against Corruption 2004 to 'institute a comprehensive ... regulatory and supervisory regime for ... beneficial ownership identification'.¹⁸⁴

Second, public access to the beneficial ownership registers¹⁸⁵ in Ireland must be increased. At present, members of the public must demonstrate that they have a 'legitimate interest' in an access request. This was a response to an EU Court of Justice ruling that unlimited public access to beneficial ownership information breached

181 Transparency International, 'Searching for owners: what we found when we cross-analysed company and real estate ownership data in France' (5 July 2023).

182 Bill, Heads 35–37.

183 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (4th Anti-Money Laundering Directive/4 AMLD), OJ L 141/73, Art 30.

184 United Nations Convention Against Corruption 2004, Art 14; see also Art 52.

185 Beneficial owners of ILPs are registered on the Beneficial Ownership Register of Certain Financial Vehicles (CFV) held by the Central Bank. Those of other entities are registered on the Central Register of Beneficial Ownership of Companies and Industrial & Provident Societies (RBO).

data protection,¹⁸⁶ but Ireland ‘moved with curious haste’¹⁸⁷ to take a ‘highly restrictive approach’.¹⁸⁸ Its definition of ‘legitimate interest’ – engagement in the prevention, detection, or investigation of money laundering or terrorist financing offences – is consistent with the 6th Anti-Money Laundering Directive (6 AMLD) which is due to be transposed into Irish law by 10 July 2026.¹⁸⁹ However, Ireland additionally requires that accessing the information serves this purpose, and that the subject of the request either is connected with persons convicted of an offence involving money laundering or terrorist financing, or holds assets in a high-risk third country.¹⁹⁰ Not only does 6 AMLD not impose these hurdles, it deems certain members of the public to have a legitimate interest, including journalists and civil society organisations, and those likely to enter into transactions with the subject of the request.¹⁹¹

The fact that a fee is charged to search the register also limits public access¹⁹² and, although the Bill also requires an LP to keep its own register of the beneficial owners of any non-EEA corporate partners, access to this is limited to state authorities.¹⁹³

186 C-37/20 and C-601/20 ECLI:EU:C:2022:912 *WM and Sovim SA v Luxembourg Business Registers*, para 8.4.4.

187 TI Ireland, ‘Corruption Perceptions Index 2022 – “No room for complacency” as Ireland perceived to be less affected by corruption than UK for the first time in 25 years’ (31 January 2023).

188 Máira Martini, ‘EU court ruling on beneficial ownership registers: one year on, need for harmonised approach is clear’ (*Transparency International Blog* 22 November 2023).

189 6th Anti-Money Laundering Directive (6 AMLD) (Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849, OJ L 2024/1640), Art 78.

190 European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 SI No 110 of 2019, reg 25(3A) (extended to ILPs by Investment Limited Partnerships (Amendment) Act 2020), as amended by the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 No 308 of 2023, reg 4.

191 6 AMLD (n 189 above) Art 12(2). The former must be connected with the prevention or combating of money laundering, its predicate offences or terrorist financing, while the latter must wish to prevent a link between their transaction and any of these offences.

192 John Devitt, ‘Comment: Ireland is being used to launder the world’s dirty money and must take action’ *Business Post* (Dublin 9 March 2021) recommended that data on the register of beneficial ownership should be available free of charge.

193 Bill, Head 34.

Other loopholes in disclosure requirements

First, little information about ordinary LPs is registered at all – not their accounts (except in limited circumstances) or their internal agreement or their ultimate beneficial owners.

The accounts of ordinary LPs are generally not required to be publicly registered. By way of exception, they must register their accounts with CRO if all their general partners are limited companies, or unlimited companies/partnerships all of whose members/partners are limited companies, because in these circumstances general partners have effectively limited their liability for partnership debts.¹⁹⁴ However, it is not clear that this obligation is monitored or enforced by CRO, even though '[a]ccounting and disclosure requirements ... operate ... through public disclosure of information, for the benefit of the *community as a whole*'¹⁹⁵ and

the fact that a [firm's] accounts and reports must be published enables the public at large to ... bring pressure to bear on 'the firm' so as to satisfy relational and wider social interests.¹⁹⁶

Second, not all of the registered information is publicly disclosed. CRO levies a fee for disclosure of anything beyond an LP's name, address and registered number, in contrast to the UK's Companies House whose records are free to search and download. Although ILPs must supply more information than ordinary LPs in order to obtain registration with the Central Bank, virtually none of this is publicly available.

The result is a loophole in transparency which hampers regulators, enforcement agencies, creditors, and members of civil society including journalists, in investigating LPs or holding them to account.¹⁹⁷ It is an effective way to achieve 'complete anonymity' and 'a wonderfully opaque method of hiding ownership and control',¹⁹⁸ and it prevents the media from acting 'as a "watch dog" reflecting societal interests and the need for transparency in the firm's operations'.¹⁹⁹ Suppliers and creditors cannot establish whom they are dealing with or access

194 The European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 SI No 597/2019 implement Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, OJ L 182/19. See also L K Shields, 'Irish Limited Partnerships Annual Return and Financial Reporting Obligations' (15 July 2024).

195 UK Company Law Review Steering Group, 'Strategic Framework' (n 1 above) para 5.1.4 (original emphasis).

196 Ibid para 5.1.44.

197 Wilton Park, 'Report – Driving Dirty Money out of the UK: Beyond Economic Crime Plan 2' (WP3056 17–19 May 2023).

198 Higgins and Donnelly (n 51 above) quoting Declan de Lacy, partner with Dublin accountancy firm, and Graham Barrow, financial crime consultant, respectively.

199 Freeman et al (n 3 above) 17.

their assets if the LP defaults on its obligations, and investigations and enforcement cannot take place.

Again, we see the influence of the financial services industry. It has argued that since investment vehicles typically impose ‘strong obligations of confidentiality in favour of investors’ there is no case for requiring more information to be registered or for that information to be made public.²⁰⁰ But this ignores the fact that the limited liability given to limited partners is a privilege in return for which disclosure is required. It also ignores the fact that the use of corporate bodies as general partners – extensively by the financial services industry – achieves *de facto* limited liability for those general partners, which also necessitates fuller disclosure as a *quid pro quo*.

The Bill therefore needs to increase the information disclosed about ordinary LPs, their partners, and their beneficial owners. It does impose an obligation on LPs to file an annual confirmation statement updating registered information (which indirectly provides evidence that they are still active)²⁰¹ and requires LPs to provide a registered office address and email address,²⁰² and more detail about their partners.²⁰³ However, neither the LP itself nor its EEA corporate partners – not even if they are general partners – need disclose their beneficial owners, and no extra information at all is required from EEA limited partners.

A recent EU Directive²⁰⁴ will, when transposed into Irish law, require not only verification of registered information by CRO (as discussed above), but also that ordinary LPs disclose more information²⁰⁵ and that CRO makes more of it available for free.²⁰⁶

200 BVCA response to Department for Business, Innovation & Skills (BIS), ‘Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business: discussion paper’ (July 2013).

201 Bill, Head 29.

202 Ibid Head 23(2) (c) and (d).

203 Ibid Heads 23(2)(e) and 34(2). CRO guidance already states that any corporate partner registered outside Ireland must supply a certified copy of their constitution, copies of their certificate of incorporation and any certificates of name changes and, if any of these are not in Irish or English, certified translations (CRO information leaflet No 6, December 2019).

204 Directive (EU) 2025/25 (n 144 above).

205 Article 14a of Directive (EU) 2017/1132 (n 144 above), as inserted by the Directive (EU) 2025/25 (n 144 above). Art 14a is applied by Art 13 to the companies listed in Annexes IIB, which lists Irish LPs (comhpháirtíochtaí teoranta). The Explanatory Memorandum and Preamble, para 36, refer to the information being ‘publicly available’ on business registers, so not merely disclosed to CRO.

206 Art 19a(2) of Directive (EU) 2017/1132 (n 144 above), as inserted by Directive (EU) 2025/25 (n 144 above). Where Directive (EU) 2025/25 permits a fee to be charged, it must not exceed the administrative costs (Art 19(1) of Directive (EU) 2017/1132 as amended by Directive (EU) 2025/25) but the fees charged by CRO (€2.50–3.50) would comply with this.

Although mandatory disclosure of ILP information to the Central Bank is greater than ordinary LPs' disclosure to CRO, even less of it is available to the public (and the Directive does not apply to ILPs).²⁰⁷ Transparency of ILPs could be improved by requiring information about ILPs to be registered with, and publicly available at, CRO. Although the UK equivalent of ILPs, private fund limited partnerships (PFLPs), are much less regulated than ILPs, they are registered at the UK's Companies House in the same way as other types of business organisation, and their details are publicly available on the register there.

No restrictions on corporate partners

The legislation imposes no restrictions on the use of corporate partners in LPs, and indeed LPs are not required to have any human partners at all. It is likely that this is primarily at the behest of the financial services sector because corporate partners are a common feature of investment LPs in order to limit liability and facilitate partner tax planning.²⁰⁸ However, the use of corporate partners creates significant vulnerabilities for LPs and is often associated with wrongdoing,²⁰⁹ a risk seemingly recognised by Ireland's total ban on corporate directors.²¹⁰

First, corporate partners can facilitate secrecy and lack of accountability, including financial accountability because the real individuals behind them are obscured, often behind further corporate layers or in overseas jurisdictions. As discussed above, the Bill will require some beneficial owners to be disclosed, but not all, and not publicly.

Second, enforcement measures such as disqualification, fines or imprisonment, have less or no deterrent effect on corporate partners. The risk that limited liability could be abused was foreseen in the nineteenth century, when legislation to permit LPs and modern-day companies was under discussion, and sanctions were provided; but the use of corporate directors or partners removes the possibility of a

207 Only ordinary Irish LPs, and not ILPs, are listed in annex IIB to Directive (EU) 2025/25 (n 144 above), which specifies the types of firm to which the relevant provisions of the Directive apply.

208 Pinsent Masons, 'Proposals to reform Irish limited partnerships oblige greater transparency' (*Out-Law News* 21 August 2024).

209 Elspeth Berry, 'Pandora's box: how UK and Irish partnerships are used in international crime' (*OpenDemocracy* 2 November 2021).

210 Companies Act 2014, s 130.

meaningful sanction being imposed on the individual(s) responsible for the abuse.²¹¹

Third, the use of corporate partners also enables *de facto* limited liability for general partners because the personal assets of their shareholders and directors are not available to meet the LP's debts and obligations.²¹² The vulnerability of limited liability is discussed further below.

These vulnerabilities would be avoided if corporate general partners were prohibited in the same way as corporate directors. However, LPs that engage in investment projects typically have a corporate general partner, and a complete ban is therefore probably unrealistic. An alternative, in return for the financial privacy that LPs (unlike companies) enjoy, would be to require a minimum of one individual general partner. That individual would be directly accountable through genuine personal liability for the firm's debts, and for penalties and sanctions. An alternative more acceptable to the financial services industry might be to require a compliance officer, along the lines of existing provisions for branches of EEA companies. They are required to file the name of a person resident in Ireland who is (i) authorised to accept service of documents required to be served on the non-Irish company, and (ii) authorised to ensure compliance with the provisions of CA 2014.²¹³

Unfortunately, the Bill imposes no such requirements and, indeed, introduces an explicit provision that a body corporate may be a partner.²¹⁴ The Bill does, however, require the disclosure of more information about some corporate partners, as discussed above, albeit that most of the information is available only to the authorities and not the public, and some of it is only required in relation to non-EEA corporate partners.²¹⁵

No requirement for a real connection with Ireland

There are two related vulnerabilities here, and both have results which are contrary to the Irish Government's aims in Project Ireland 2040

211 OpenCorporates' response to Department for Business, Innovation & Skills (BIS), 'Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business: Discussion Paper' (July 2013).

212 Twomey (2019) (n 35 above) para 28.17.

213 CA 2014, ss 1302 and 1304. Although CA 2014, s 223(1), provides that 'It is the duty of each director of a company to ensure that this Act is complied with by the company', an equivalent duty on general partners would be meaningless in the absence of provisions mandating that at least one of them is an individual.

214 Bill, Head 17(4).

215 The information listed in Head 23(2)(e) only applies to *corporate general* partners; that listed in Head 34 (including UBOs) only applies to *non-EEA corporate* partners.

for regional economic growth,²¹⁶ and in ‘Ireland for Finance’ for jobs which are unlikely to be outsourced or easily transferable.²¹⁷

First, there are no restrictions on the use of overseas partners in Irish LPs, as none of the partners need be resident in, or indeed have any connection with, Ireland.

Perhaps unsurprisingly, therefore, the majority of LP partners have no connection with Ireland,²¹⁸ often being based in UK overseas territories, the Seychelles, Belize, countries in eastern Europe²¹⁹ and former Soviet republics,²²⁰ as the Pandora papers demonstrated.²²¹ Less than a third of ordinary LPs formed between 2015 and 2021 had an Irish general partner and many of the overseas partners were based in secrecy jurisdictions.²²² Over a third were controlled by general partners in the Seychelles or Belize, and a fifth had strong links to Russia or Ukraine.²²³ The bulk of 800 LPs registered at a single Dublin address were found to involve partners based in offshore jurisdictions.²²⁴ Indeed, Irish LPs have been promoted as ‘cheap, opaque, and tax-free’ to Russia, Ukraine and Latvia, and a recent surge in the registration of Irish LPs was dominated by overseas partners from secrecy jurisdictions, indicating that ‘offshore-type secrecy arrangements have spread from their more traditional centres ... to onshore locations such as ... Ireland’.²²⁵

But overseas partners are clearly a risk factor, particularly when based in jurisdictions which are high risk (ie where there are deficient money-laundering and terrorist-financing controls) or secrecy jurisdictions (ie where business records are not kept or are not public). They put the individuals operating Irish LPs beyond the reach of regulators, enforcement agencies and creditors, and increase the secrecy and opacity of the LP’s structure. This is especially so when, as is usually the case, the overseas partners are also corporate

216 Rialtas na hÉireann Government of Ireland, ‘Planning Framework’ (n 25 above) 3, 5–7, 9, 16, 19–20, 25, 65–67 and 154–155 (156–157 in the ‘Draft First Revision’); ‘Development Plan’ (n 26 above) 6–7 and 67–70; and ‘Building Ireland’s Future’ (n 29 above) 3 and 5–6.

217 Rialtas na hÉireann Government of Ireland, ‘Ireland for Finance’ (n 17 above) 16 and 19.

218 Keena, ‘Partnership structure a shield against scrutiny’ (n 51 above).

219 DETE (n 60 above) CLRG, 7.

220 Keena, ‘Partnership structure a shield against scrutiny’ and ‘Pandora papers’ (both n 51 above).

221 Berry (n 209 above) and IMF (n 46 above).

222 Higgins and Donnelly (n 51 above).

223 Donnelly and Higgins, ‘Irish limited partnerships “have become a mask for shady dealings”’ (n 153 above).

224 Keena, ‘Pandora papers’ (n 51 above).

225 Keena, ‘Ireland marketed in Russia as offshore location with “impeccable reputation”’ (n 51 above).

entities,²²⁶ the separate problems with which have been discussed above. Many offshore partners have been linked to fraud and money laundering outside of Ireland,²²⁷ and the use of partners based in secrecy jurisdictions in particular has been identified as a money-laundering/terrorist-financing risk factor by the IMF²²⁸ and the EU Commission:²²⁹ in particular

foreign proceeds of crime (e.g., transnational organized crime, tax evasion, overseas corruption) flowing to Ireland for integration into the legitimate economy, funds intended for [money laundering/terrorist financing] passing through its financial sector and outflows of domestic proceeds of crime for [money laundering].²³⁰

In addition to this opacity, the use of overseas partners can also mean that no tax is paid in Ireland.²³¹ This enables wrongdoers to have a business vehicle

registered in a first-world economy which is untaxed, and the ownership of which is totally obscure ... [and] end up with a de-facto offshore entity.²³²

Ideally, the Bill should prohibit offshore general partners or, failing that, general partners based in secrecy jurisdictions (ie those who are not subject to rigorous transparency requirements, including disclosure of beneficial owners of corporate bodies). However, the Bill imposes no such requirement, merely requiring at least one general partner to be resident in, or have its registered office in, an EEA state.²³³ While this makes the general partner marginally easier to trace than if based in a secrecy jurisdiction outside the EEA, it provides no guarantee that its assets will be available to Irish creditors or enforcement agencies.

Second, an ordinary LP itself need not have any real or continuing connection with Ireland.²³⁴ Its proposed principal place of business on first registration must be in Ireland, but this need not be maintained

226 TI Ireland (n 187 above).

227 Donnelly and Higgins, 'Irish limited partnerships "have become a mask for shady dealings"' (n 153 above).

228 IMF (n 46 above) 6 and 16.

229 European Commission, 'Communication from the Commission to the European Parliament and the Council: Communication on further measures to enhance transparency and the fight against tax evasion and avoidance' COM(2016) 451 final, 7.

230 IMF (n 46 above) 8.

231 Keena, 'Pandora papers' (n 51 above).

232 Colm Keena, 'Irish limited partnerships: what are they and what is the problem?' *Irish Times* (Dublin 4 October 2021).

233 Bill, Head 19.

234 An ILP is required to have a registered office and a principal place of business in Ireland at all times, to ensure a continuing connection (ILP Act 1994, s 12(1)).

thereafter.²³⁵ This makes it difficult for investigators, regulators and enforcement agencies to locate it or its assets, and the IMF has noted that:

[r]apid growth in the size of the Irish financial center ... has increased further the [money-laundering/terrorist-financing] risks from non-resident and cross-border activity.²³⁶

Such firms have been described as using ‘flags of convenience – set up because the background regulatory regime is much less stringent’²³⁷ and, as early as 1994, Deputies Farrelly and R Bruton warned (in relation to ILPs) that ‘[we] need an assurance that partnerships cannot be used as offshore companies for purposes we would not like’.²³⁸ The lack of connection not only facilitates wrongdoing, it also means that the LP is unlikely to provide an economic benefit to Ireland.

The Bill should therefore require an LP to have a real and continuous link to an economic activity in Ireland.

The Bill does contain a potentially helpful provision that an LP will not be registered ‘unless it appears to the Registrar that the [LP], when registered, will carry on an activity in the State’.²³⁹ However, although this replicates existing company law,²⁴⁰ it is not clear what counts as an ‘activity’, or how substantive or economically valuable it must be. It is also unclear how the registrar will assess this, and how rigorously. Further, this requirement is not matched by any proposal for the new annual confirmation statement required by the Bill²⁴¹ to confirm, let alone demonstrate, a continuing activity in Ireland.

The Bill also requires an LP to have an ‘appropriate’ registered office or principal place of business in Ireland,²⁴² but this would not guarantee that it will carry on an economic activity there, contrary to DETE’s assertion to this effect²⁴³ and, indeed, to the assumptions of others.²⁴⁴ This is because the definition of ‘appropriate’ can be

235 LPA 1907, s 8; and Twomey (2019) (n 35 above) para 28.26.

236 IMF (n 46 above) 8. LPs which have limited or no connection with Ireland are liable to have no bank account in Ireland, which enables them to avoid AML regulation in Ireland: Transparency International UK, ‘[Hiding in plain sight](#)’ (2017) 28.

237 Jim Wells MLA, Northern Ireland Assembly Committee for Enterprise Trade and Investment, ‘Report on the Limited Liability Partnerships Bill’ (NIA Bill 9/01).

238 Seanad Éireann debate, Tuesday 5 July 1994, vol 140, no 19 (Farrelly), and Dáil Éireann debate, Tuesday 21 June 1994, vol 444, no 1 (R Bruton).

239 Bill, Head 18(2).

240 CA 2014, s 18.

241 Bill, Head 29.

242 Ibid Head 18.

243 DETE (n 41 above) s 2.

244 See, for example, Caoimhe McCrea (Addleshaw Goddard), ‘[Proposals of the General Scheme for Limited Partnerships and Business Names Bill 2024](#)’ (*Insights & News* 26 August 2024).

fulfilled if the LP merely has a registered office in Ireland, or just a general partner's address there, or even just the address of a TCSP acting for the LP. Although these options should combat the 'phantom or postbox'²⁴⁵ LPs – which provide a fictitious Irish address, often resulting in the innocent residents receiving intimidating demands for payment and a damaged credit rating – none guarantee a substantive economic link to Ireland.

Again, the influence of the financial services industry and its professional advisors can be seen to be at work; a significant number of the responses to the 2019 consultation on LP reforms objected to the proposal for an LP to be required to have a principal place of business in Ireland.²⁴⁶

No power to investigate or deregister wrongdoing LPs

The legislation currently leaves a glaring loophole in the enforcement powers against wrongdoing partnerships, which creates an obvious vulnerability.

First, there is no power to investigate the affairs of an ordinary LP in the event of suspected fraud or other wrongdoing, and the Bill does not propose to introduce one. Yet, the need for such a power, in order to protect creditors and the wider community, has been recognised in both ILP²⁴⁷ and company²⁴⁸ legislation, and it is not clear why LPs have not been made subject to an equivalent safeguard. The Bill therefore needs to include powers equivalent to the existing powers to investigate companies and ILPs.²⁴⁹ Company inspectors can be appointed by the court on the application of members, directors, creditors, or Ireland's Corporate Enforcement Authority (CEA) (whose role is to investigate suspected offences under, or non-compliance with, corporate legislation),²⁵⁰ while ILP inspectors may be appointed only on application by the Central Bank.²⁵¹ An ordinary LP should therefore be subject to investigation on application by its partners, creditors, or the CEA. The grounds set out for both companies and ILPs are similar and would be equally appropriate for ordinary LPs, including that the firm's affairs are being conducted fraudulently, and that those who

245 Dáil Éireann debate, Thursday 12 November 2020, vol 1000, no 6.

246 DETE (n 60 above) Law Society of Ireland, para 5.1; Arthur Cox, para 4.1; CLRG, 9–10; Byrne Wallace, Q4; Deloitte, Q4; and McCann FitzGerald, 3, said it was only necessary for a service address to be provided.

247 ILP Act 1994, s 26.

248 CA 2014, ss 747ff.

249 ILP Act 1994, s 26.

250 CA 2014, ss 747ff.

251 ILP Act 1994, s 26.

formed or manage it are guilty of fraud or misconduct.²⁵² Given the international nature of the abuses of LPs, as discussed above, the court's explicit power to take account of events occurring outside Ireland, as provided in relation to ILPs, but not companies, should also be applied to LPs.²⁵³

Second, there is no power to compulsorily dissolve or strike an ordinary LP off the register in the public interest, if it is guilty of wrongdoing. Again, the need for such a safeguarding power has been recognised in relation to both ILPs (whose winding-up in the public interest can be ordered by the Bank)²⁵⁴ and companies;²⁵⁵ and again, it is not clear why LPs have not been made subject to an equivalent safeguard or why the Bill contains no such power.²⁵⁶ It permits the registrar to remove an LP from the register, but only for defaults in registration or the happening of an event which makes it unlawful to carry on the business in partnership,²⁵⁷ and the latter would not apply merely because the LP engages in wrongdoing, but only if the substantive business is unlawful.²⁵⁸

Multiple partner appointments

There is no statutory limit on the number of appointments as a partner that a person (individual or corporate) can hold, and multiple appointments often involve corporate or overseas partners, the problems with which have already been discussed. For example, investigators discovered that eight (offshore) partners controlled 859 of the LPs registered by a particular group of TCSPs,²⁵⁹ and that one individual in the Seychelles was a general partner in almost 150 LPs, while a Romanian national was the controlling partner in more than 370 LPs.²⁶⁰

Multiple appointments can facilitate wrongdoing because they allow the perpetrators to set up and operate multiple firms, which increases the scope for money laundering and, importantly, for

252 Ibid and CA 2014, s 748.

253 ILP Act 1994, s 26(3).

254 Ibid s 3.

255 CA 2014, ss 568–577.

256 The UK's ECCTA 2023 now allows the Secretary of State to petition the court for winding up in the public interest (LPA 1907 (UK), s 27, as inserted by ECCTA 2023, s 131).

257 Bill, Heads 31–32.

258 *Everet v Williams* (1725) noted in (1893) 9 LQR 197 and *Hudgell, Yeates & Co v Watson* [1978] 2 All ER 363. See, generally, Twomey (2019) (n 35 above) ch 9.

259 Ross Higgins, 'Smash and grab: the UK's money laundering machine' (*Bellingcat* 1 October 2019).

260 Higgins and Donnelly (n 51 above).

obfuscation of their activities.²⁶¹ Indeed, the Irish Government itself has acknowledged these risks.²⁶²

It is also unlikely that general partners who act for dozens or hundreds of LPs can fulfil their legal duties to their co-partners, creditors or the state.

Again, we see the influence of the financial services industry, where multiple appointments are ‘common practice in the investment industry’.²⁶³

What the Bill should include as a minimum standard (but does not), is the same restriction on partners as already imposed on directors, in recognition of the same risks – a limit of 25 directorships.²⁶⁴

Tax transparency

The fact that LPs are tax transparent – meaning that the LP itself is not liable to tax and the only tax paid is by its partners on their profit shares²⁶⁵ – makes them attractive both to legitimate investors and wrongdoers.²⁶⁶ One company formation agent has advertised it as ‘one of the most valuable aspects’ of Irish LPs,²⁶⁷ and the financial services industry regards tax transparency as an advantageous feature of LPs,²⁶⁸ as do TCSPs,²⁶⁹ because it allows funds to be formed without the complexity of fund tax issues.

However, it provides a potential vulnerability as it often results in tax being avoided in Ireland entirely²⁷⁰ because overseas partners are not taxed in Ireland (and in fact can often avoid tax in their home jurisdictions also), and ‘[o]ne of the major obstacles to tax collection worldwide is corporate anonymity’.²⁷¹ As the then Deputy Irish Prime

261 Ibid and Transparency International UK, ‘Partners in Crime’ (October 2020) 18–22.

262 DETE (n 41 above) s 1.1.

263 BVCA response to Department for Business, Innovation & Skills (BIS), ‘Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business: Discussion Paper’ (July 2013).

264 CA 2014, s 142.

265 Revenue C ain agus Custaim na h Eireann Irish Tax and Customs, ‘Notes for Guidance’ and ‘Collective investment vehicles’ (both n 69 above) .

266 DETE (n 60 above) CLRG, 6–7; Twomey (2019) (n 35 above) para 28.13.

267 Company Bureau.

268 Peter Vale and Brian Murphy, ‘The reform of the investment limited partnership’ (Accountancy Ireland April 2019) 62; and A&L Goodbody, ‘Fund structures: ILPs/ investment limited partnerships’, 2; DETE (n 60 above) Arthur Cox, para 1.2; Irish Funds, 4 and 9; William Fry, 3.

269 DETE (n 60 above) IVCA, Q6.

270 Keena, ‘Pandora papers’ (n 51 above).

271 Alldridge (n 175 above) 29.

Minister said of such arrangements ‘There is nothing in that for us’²⁷² and, as another commentator has noted:

the same harmful secrecy laws which enable tax evasion are also conducive to laundering the proceeds of crime and creating a criminogenic environment in which financial crime thrives.²⁷³

The Bill should therefore require, first, a genuine connection between the LP itself and Ireland, so that taxes on employees, property taxes or turnover taxes may be paid in Ireland; second, at least some partners based in Ireland, so that partner income/corporation tax is paid there; and third, no partners based in secrecy jurisdictions, so there is transparency for the tax authorities.

Limited liability

LPs can offer limited liability for all but one partner, and this is clearly seen as attractive by potential limited partners.²⁷⁴ Yet ordinary LPs (unlike ILPs)²⁷⁵ are not currently required to use a suffix to their firm name to indicate their status (ie as an LP), which makes it more likely that third parties are unaware that not all partners are personally liable for the firm’s debts. Fortunately, the Bill proposes the mandatory use of an appropriate suffix; either the words ‘limited partnership’ or ‘comhpháirtíochtaí teoranta’, or the abbreviations LP or CT.

Unfortunately, LP regulation will still allow what little personal liability there is to be virtually eliminated. In addition to the practical financial consequences of this for creditors, employees and government enforcement agencies, this also gives rise to the moral hazard of partners engaging in risky decisions for which they can avoid the costs.²⁷⁶

272 Jennifer Bray, ‘Government will close tax loopholes – Varadkar: Tánaiste says some arrangements revealed in Pandora papers appear to be “dubious”’ *Irish Times* (Dublin 5 October 2021).

273 Mary Alice Young, ‘Financial transparency in Britain’s secrecy jurisdictions has just got a whole lot murkier following the UK’s decision to leave the EU’ (2016) 31(11) *Journal of International Banking Law and Regulation* 583–586, 585.

274 Vale and Murphy (n 268 above) and DETE (n 60 above) IVCA, Q1; and William Fry, 3.

275 ILP names must include one of the suffixes: ‘investment limited partnership’, ‘Comhpháirtíocht Theoranta Infheistíochta’, ILP or CTI (ILP Act 1994, s 12(2)).

276 Richard DeFusco, Paul Shoemaker and Nancy Stara, ‘Controlling the moral hazard created by limited liability’ (1996) 12(3) *Journal of Applied Business Research* 9–19, 12–14; Deniz Igan, Prachi Mishra and Thierry Tresselt, ‘A fistful of dollars: lobbying and the financial crisis’ (IMF WP/09/287 2009) 5–6 and 9–10; Marie-Laure Djelic and Joel Bothello, ‘Limited liability and its moral hazard implications: the systemic inscription of instability in contemporary capitalism’ (2013) 42 *Theory and Society* 589–615, 606–609 and Berry (n 14 above) 119 and 120.

First, as discussed above, the general partner, who theoretically has personal liability, can in fact be a corporate body, thus achieving *de facto* limited liability.

Second, limited partners' mandatory capital contribution is not subject to a minimum amount,²⁷⁷ so their liability could be as little as one euro.²⁷⁸ ILP limited partners have even greater protection: they are not even required to contribute capital and are not liable for withdrawn capital beyond four months after the withdrawal.²⁷⁹ This transfers the risk of cash-flow problems or insolvency from them to innocent third parties.

What the Bill should do is, first, prohibit or restrict the use of corporate partners as discussed above; and, second, require a meaningful capital contribution from limited partners, which cannot be withdrawn without continuing liability for that amount.

4 IMPROVING PARTNERSHIP LAW FOR ALL BUSINESS SECTORS

The discussion in the preceding sections has focused on the vulnerabilities in the current regulation of LPs that facilitate their use for wrongdoing. However, (as outlined in Section 2) the influence of the financial services sector has also resulted in the absence of reforms that would benefit ordinary LPs and indeed general partnerships. This section will evaluate the key reforms which would benefit law-abiding businesses and thereby contribute to achieving the aims of Project Ireland 2040.²⁸⁰

Separate legal personality

Unlike a company, an LP (ordinary or ILP) does not have separate legal personality from its members. Separate personality enables useful features such as continuity of the company on a change of members, and the ability to enter into contracts and own property directly. Although LPs can achieve equivalent features through more indirect means, separate personality is generally perceived as advantageous because it simplifies business operations.²⁸¹ Its absence leads to dissolution of

²⁷⁷ LPA 1907, s 4(2).

²⁷⁸ This advantage is highlighted by TCSPs, for example, Company Bureau (n 267 above).

²⁷⁹ ILP Act 1994, s 20.

²⁸⁰ Rialtas na hÉireann Government of Ireland, 'Planning Framework' (n 25 above) and 'Development Plan' (n 26 above).

²⁸¹ See, for example, the Law Commission of England and Wales and the Scottish Law Commission, Partnership Law (Law Com No 283 and Scot Law Com No 192 2003), pt V; and LexisPSL Corporate Practice Guidance, 'Setting up a joint venture – choice of structure'.

an ordinary LP on a change of partner (unless there is prior contrary agreement) – and other potentially adverse consequences, including the need to renegotiate both external contracts and the internal agreement, and the risk that third parties and indeed partners make take the opportunity to simply walk away. This problem was highlighted in the Dáil as long ago as 2000.²⁸²

Again, we see the influence of the financial services industry. Overseas jurisdictions where financial services LPs often operate may not recognise an LP's tax transparency if it has separate personality,²⁸³ and it has been argued by a leading Irish law firm that '[t]he main attraction of an ILP is that [it] does not have an independent legal existence'.²⁸⁴

The Government's 2019 consultation on LP reforms²⁸⁵ did not include separate personality. Only three responses proposed it, and then only as an optional alternative – but, as explained above, all but one of the responses came from representatives of the financial services industry and their professional advisors.²⁸⁶

The introduction of separate personality would be beneficial but, failing that, the Bill should at least give ordinary LPs the benefit that ILPs already have – namely, continuity on a change of general partner.²⁸⁷

Removing restrictions on partner numbers

Ordinary LPs, but not ILPs,²⁸⁸ are currently restricted to a maximum of 20 partners,²⁸⁹ subject to a higher limit of 50 for investment and loan finance firms, and a complete exemption for accountants, solicitors, and providers of investment services to businesses.²⁹⁰ Again, an advantage has been bestowed almost exclusively only on financial firms and their advisors.

282 Mr Naughten, Dáil Éireann debate, Thursday 12 October 2000, vol 524, no 1.

283 John F Avery Jones et al, 'Characterization of other states' partnerships for income tax' [2002] *Bulletin for International Taxation* 288–320, 288–290.

284 A&L Goodbody (n 269 above) 2.

285 DBEI (n 89 above).

286 Three responses supported separate personality, two for LPs on condition that tax transparency was retained (DETE (n 60 above) Arthur Cox, paras 4.3 and 11.7; Law Society of Ireland, para 11.2.5) and one as an option for a new form of ILP (Simmons & Simmons, 3).

287 ILP Act 1994, s 37.

288 *Ibid* s 4(4).

289 LPA 1907, s 4(2). The maximum for a banking partnership is 10 partners.

290 CA 2014, s 1435(c). The exemptions also include thoroughbred horse breeders.

Although the Government's 2019 consultation on LP reforms²⁹¹ did not include this restriction, several responses proposed its abolition,²⁹² and indeed the issue was raised in the Dáil as long ago as 2000.²⁹³ However, the Bill makes no such proposal, and this is unsurprising given that it has already been abolished for ILPs and most professional service firms, which is liable to diminish financial services lobbying for its further abolition. One response to the Government's 2019 consultation on LP reforms actually opposed abolishing the limit 'in case this opens up an avenue for unscrupulous promoters',²⁹⁴ but there is no evidence that wrongdoing LPs in the UK, where the 20-partner limit was abolished several decades ago,²⁹⁵ have made particular use of large numbers of partners.

Safe harbour list

The LPA gives limited partners their limited liability on condition that they do not engage in 'management of the partnership business'.²⁹⁶ If they do, they forfeit that limited liability. In response to uncertainty over what might be held to constitute 'management' for this purpose, the ILP Act 1994 – which provides an equivalent sanction for 'taking part in the conduct of the business'²⁹⁷ – contain a 'safe harbour' list of activities which are stated not to constitute such behaviour.

In principle such a list would benefit limited partners in ordinary LPs and thus support enterprise in line with Project Ireland 2040.²⁹⁸ However, some of the actions in the ILP 'safe harbour' list are in fact management-type activities. These include being a director or shareholder of a corporate partner, and thus potentially able to control that general partner.²⁹⁹ The safe harbour list thus allows limited partners to engage in some degree of management while retaining their limited liability. This transfers the financial risks of such decisions from the partners to innocent third-party creditors and wider society, which is contrary to the spirit of the legislation which, as discussed above, is to penalise engagement in management by loss of limited liability.

291 DBEI (n 89 above).

292 DETE (n 60 above) Byrne Wallace, Q5, recommendation 11; Arthur Cox, para 11.2; William Fry, 6–7; Irish Funds, 15; Mason Hayes & Curran, 6.

293 Mr Naughten, Dáil Éireann debate, Thursday 12 October 2000, vol 524, no 1.

294 Company Law Review Group (CRLG), 'Report of the Company Law Review Group' (2007) 40.

295 Regulatory Reform (Removal of 20 Member Limit in Partnerships etc) Order 2002.

296 LPA 1907, s 6(1).

297 ILP Act 1994, s 6(2).

298 Rialtas na hÉireann Government of Ireland, 'Planning Framework' (n 25 above) and 'Development Plan' (n 26 above).

299 ILP Act 1994, s 6(4(a)).

What is needed is for management-type activities to be removed from the list in the ILP Act 1994, and then for a similar list to be applied by the Bill to ordinary LPs. A safe harbour list for ordinary LPs was supported in principle by many of the responses to the 2019 consultation on LP reform,³⁰⁰ but the Bill makes no such proposal. Again, this is perhaps unsurprising given that ILP limited partners already benefit from such a list, which is liable to diminish the strength of financial services lobbying for it to apply more widely.

Winding-up by limited partners

Limited partners do not have the power to wind up an LP, and the only option for them currently is to petition the court. Enabling them to appoint a person to wind it up if no general partners remain to do so would provide a cost and efficiency saving. Of course, financial services firms are unlikely ever be in this position – both because they are likely to have access to the necessary expertise to avoid it, and because the general partner will normally be a corporate body – and so are unlikely to lobby for it.

A model agreement

The provision of a model agreement for LPs (and indeed for general partnerships) would not only save costs but, if provided as a default position in the absence of contrary agreement in the same way as model articles of association are provided for companies in the UK,³⁰¹ would ensure that no LP is without a written agreement, the lack of which is a frequent cause of expensive and destructive disputes. Of course, financial services firms have the resources to pay for such an agreement to be drawn up, and to pay for advisors who will alert them to the advantages of doing so and the risks of failing to do so – and so, again, are unlikely to lobby for it.

5 LESSONS FOR THE UK?

As explained at the outset, the LPA 1907 applies in both Ireland and the UK, and it is only with the UK's ECCTA 2023 reforms that the LPA 1907 has begun to look very different in the two jurisdictions. Many of the provisions of the Bill parallel ECCTA 2023, for example giving CRO greater powers to verify registered information, and requiring more information about partners. But there is also scope for the UK to learn from Ireland's approach in the Bill, as the following examples demonstrate.

300 DETE (n 60 above) Law Society of Ireland, para 11.2.2; Arthur Cox, para 11.3; William Fry, 5; IVCA, Q1; and McCann FitzGerald, 41.

301 Companies (Model Articles) Regulations 2008, SI 2008/3229, schs 1–3.

Disclosure of (at least some) beneficial owners

As discussed above, the Bill requires some LPs to disclose at least some degree of their beneficial ownership, namely the beneficial owners of their non-EEA corporate partners.³⁰² This would advance transparency and accountability in most of the UK, since in England, Wales and Northern Ireland neither LPs, nor the UK equivalent of ILPs, PFLPs, need disclose any beneficial owners, either of corporate partners or of the LP itself. However, a more significant improvement in those countries (and in Ireland) would be the adoption of the same provisions as in Scotland, where all LPs (including PFLPs) are required to disclose all of their beneficial owners.³⁰³

Improved disclosure of accounts

Although both Ireland³⁰⁴ and the UK³⁰⁵ require the public disclosure of partnership accounts in certain limited circumstances, because this stems from their obligations (prior to Brexit) to implement an EU Directive on accounts,³⁰⁶ Ireland has implemented it much more effectively. The Directive's purpose is to ensure that partnerships disclose their accounts in the same way as limited companies (and in the UK, limited liability partnerships (LLPs)), if their general partners effectively avoid personal liability by being corporate bodies.

First, Ireland defines the partnerships to which the accounting obligations apply much more widely than the UK, so more LPs are required to disclose their accounts. Both jurisdictions require disclosure if all general partners are limited companies, or unlimited entities whose own members are all limited companies. However, Ireland also requires disclosure of accounts if all general partners are 'such that the ultimate beneficial owners of the partnership enjoy the protection of limited liability'.³⁰⁷ The UK has no such catch-all provision, despite the fact that a UK LLP confers the same limited liability on its members as a limited company.³⁰⁸ This means, for example, that an Irish LP whose partners are all UK LLPs has to disclose its accounts, whereas a UK LP with the same membership does not.

302 Bill, Head 34.

303 Scottish Partnerships (Register of People with Significant Control) Regulations 2017, SI 2017/694.

304 European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 (n 194 above).

305 Partnerships (Accounts) Regulations 2008 SI 2008/569.

306 EU Directive 2013/34 (n 194 above).

307 European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 (n 194 above) reg 5(1).

308 Limited Liability Partnerships Act 2000, s 1.

Second, Ireland enables LP accounts to be registered with the LP's own records at CRO, whereas in the UK they can, at best, only be registered with the records of a corporate partner at Companies House. If none of the partners are UK companies then the disclosure options become even more obscure – which of course makes it much more difficult for third parties to find those accounts, and thus much easier for the LP to avoid disclosing them at all.

Sanctions for defaults in registration

In Ireland, defaults in registration of the required information can result in the loss of limited partners' limited liability.³⁰⁹ Despite criticisms of this sanction as 'disproportionate' and 'a relic of the unwarranted fear ... of limited liability',³¹⁰ the Bill makes no proposals to abolish it. The UK abolished it in 2009³¹¹ and the subsequent abuses of LPs, which are often LPs that fail to register the required information accurately, show that the fear is not unwarranted, and the sanction is not disproportionate. It should therefore be reinstated in the UK.

CONCLUSION

The focus on financial services when reforming (or not) LP law has deprived ordinary LPs of valuable reforms, and contributed to the failure to combat the abuses of LPs. These results are contrary to the aims of Project Ireland 2040.³¹²

The Bill makes a number of important improvements, including greater powers for CRO, some disclosure of partners' (though not the LP's own) beneficial owners, greater disclosure of other partner details, and a requirement to at least state an economic link with Ireland. However, it has failed to fully remove the vulnerabilities of secret beneficial owners, the lack of freely available verified information, corporate partners, the absence of a real economic connection to Ireland, the lack of investigatory or public interest strike-off powers, tax and liability avoidance, inadequate supervision of TCSPs or multiple partner appointments.

The Irish Government should not be deterred from making the necessary reforms to LPs, as these will not detract from its very important advantages as a business destination. First, its reputation – for being

309 An LP which is not properly registered is deemed to be a general partnership (LPA 1907, s 5).

310 Twomey (2019) (n 35 above) para 28.72.

311 Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002 SI 2002/3203.

312 Rialtas na hÉireann Government of Ireland, 'Planning Framework' (n 25 above) and 'Development Plan' (n 26 above).

‘a safe jurisdiction with the rule of law and a good reputation’,³¹³ and not considered a tax haven or secrecy jurisdiction by the OECD³¹⁴ – is a significant factor in the popularity of its business vehicles.³¹⁵ This reputation could, however, be damaged if the abuses are allowed to continue.³¹⁶ As Ireland’s enterprise and trade minister stated:

some of these partnerships don’t have any real operation in Ireland, they they’re just kind of using the good name of Ireland as cover for some bad things they are doing.³¹⁷

Second, it is a common law jurisdiction, which is particularly attractive to US and UK firms and investors.³¹⁸ Third, as Project Ireland 2040 recognises,³¹⁹ access to the EU’s single market gives Ireland a comparative advantage post-Brexit over its English-speaking, common law, rival, the UK³²⁰ (which offers otherwise broadly similar LP vehicles),³²¹ particularly for investment funds which generally operate internationally.³²²

What the Government needs to do is match its confidence and boldness in Project Ireland 2040 with bold reforms to LP law.

313 David Leask, Peter Geoghegan and Richard Smith. ‘The Northern Irish ghost companies that mask crime worldwide’ (*OpenDemocracy* 26 March 2020); see also Rialtas na hÉireann Government of Ireland, ‘Ireland for Finance’ (n 17 above) 27.

314 Donnelly and Higgins, ‘Has Ireland become a haven for scammers, launderers and pornographers?’ (n 153 above).

315 DETE (n 60 above) Arthur Cox, paras 1.2–1.3 and 2.1; CLRG, 5; Irish Funds, 1–3; William Fry, 3; Byrne Wallace, Q1; Deloitte, Q1; Maples Group, para 1.4; McCann FitzGerald, 2; and Simmons & Simmons, 1 and 3–5.

316 An Roinn Dlí agus Cirt Department of Justice (n 37 above) 19.

317 Donnelly and Mahon (n 43 above).

318 Reddan (n 98 above) 74.

319 Rialtas na hÉireann Government of Ireland, ‘Planning Framework’ (n 25 above) 109.

320 Rialtas na hÉireann Government of Ireland, ‘Ireland for Finance’ (n 17 above) 3, 14, 25, 37 and 39.

321 DETE (n 60 above) Law Society of Ireland, paras 1.5–1.7; IVCA, Q 3; Arthur Cox, para 1.5; Simmons & Simmons, 4–5; and Maples Group, paras 1.4(b) and 3.1(d).

322 Ibid Irish Funds, 8; and Maples Group, para 11.6(b). The latter also noting that the common origin of Irish and UK LP law means that there is ‘strong interest among UK fund sponsors’ in using Irish LPs. See also Murphy (n 98 above) 160; and Piers Warburton and Peter Mallon (Ashurst), ‘The Irish ILP’ (*Funds Insider* (2) 12 July 2021).