

Asset Management & Investment Funds Update

July 2022



New Rules to Facilitate Whistleblowers

The regime for the protection of persons making specified disclosures (**whistleblowers**) will shortly be amended and extended by the transposition of the EU Whistleblowing Directive (the **Directive**) into Irish law. As a result, fund management companies (**FMCs**) will soon be subject to new and enhanced obligations which will require FMCs to have in place internal reporting channels to facilitate whistleblowers.

Current whistleblower regime

The current regime in Ireland for the protection of whistleblowers comprises several different legislative measures, including:

- (i) *the Protect Disclosures Act 2014* – protects 'workers' making disclosures of 'relevant wrongdoings'
- (ii) *Central Bank (Supervision and Enforcement) Act 2013* – protects PCFs required to make disclosures of offences under, or contraventions of, financial services legislation to the Central Bank
- (iii) *UCITS Regulations* – require UCITS managers and corporate UCITS funds to have appropriate procedures in place for employees to report infringements of the UCITS Regulations through specific, independent and autonomous channels
- (iv) *EU (Money Laundering and Terrorist Financing) Regulations 2019* – require designated persons (including UCITS managers, AIFMs and corporate funds) to have appropriate procedures for employees to report contraventions of the Criminal Justice Act 2010 (as amended)

As a result of (iii) and (iv) above, FMCs are currently obliged to have in place internal channels and procedures to enable employee reporting of contraventions of the UCITS Regulations (in the case of UCITS/managers) and contraventions of AML legislation (both UCITS managers and AIFMs).

Amendments to current regime

The transposition of the Directive will be by way of amendment to (i) above, as set out in the Protected Disclosures (Amendment) Bill 2020 (the **Bill**). The Bill includes the following amendments which are likely to impact FMCs' whistleblowing policies and procedures:

- **extension of the scope of protection:** under the current regime, whistleblower protection is principally limited to employees however, amendments to the definition of this terms will extend the scope to a far wider cohort including, but not limited to, shareholders, board members, and job applicants. The scope of information subject to protection is also to be extended from information obtained 'in connection with the worker's employment' to information obtained 'in a work-related context'

- **extension of contraventions/wrongdoing:** under the current regime FMCs are obliged to protect employees reporting infringements of the UCITS Regulations (in the case of UCITS managers), contraventions of the Criminal Justice Acts (all FMCs) and 'relevant wrongdoings' under the Protected Disclosures Act 2014 (all FMCs). The Bill extends the definition of 'relevant wrongdoing' to include breaches of EU law including across financial services, prevention of money laundering and terrorist financing, protection of privacy and personal data, security of network and information systems. As a result, all FMCs will be required to protect employees reporting breaches of the specified legislative measures.
- **internal reporting procedures:** under the current regime, FMCs are required to have in place employee reporting channels and procedures as set out at (iii) and (iv) above. Following enactment of the Bill, such channels and procedures will require to:
 - be operated internally or externally by a third party authorised by the FMC
 - operate securely so as to ensure confidentiality of the reporting person
 - provide for written acknowledgement of receipt of the report within 7 days
 - designate an impartial person(s) to diligently follow up on reports, maintain communication, request further information and provide feedback, as necessary, to the reporting person including carrying out an initial assessment for prima facie evidence of a relevant wrongdoing and relaying the result of that assessment to the reporting persons, providing feedback to the reporting person within a reasonable time of no more than 3 months from acknowledgement of the report and at regular intervals of 3 months until the procedure is closed
 - provide for clear and easily accessible information to be given to employees on the reporting channels and procedures, making anonymous reports (if accepted) and for making external reports
 - allow for receipt of reports in writing or orally, or both, and from employees of the FMC's subsidiaries, affiliates, and to the extent possible by its agents, suppliers and any persons who might acquire information on relevant wrongdoings through their work-related activities with the FMC

Next Steps

Ireland has missed the deadline for transposition of the Directive, which passed on 17 December 2021. As such, there is some impetus to the adoption and finalisation of the Bill. While there are transitional arrangements under the Bill for certain entities until December 2023, these are not applicable for FMCs. As a result, it is expected that FMCs will be immediately subject to the terms of the Bill as enacted, following its entry into force.

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