Investment Funds - Regulatory Round-up and Outlook

Tuesday 28 May
Welcome

Conor Durkin, Partner, Mason Hayes & Curran
Fitness & Probity

Rowena Fitzgerald, Partner, Mason Hayes & Curran
Fitness and Probity

- Letter 8 April 2019 - Compliance Central Bank Reform Act, 2010
- Section 21
  - Failures around on-going nature of being “fit and proper”
  - Failures to report fitness and probity issues to the CBI
- Section 23
  - Individuals acting in PCF roles without prior approval of the CBI
  - Due Diligence by firms on PCFs
  - Individual Questionnaire
  - Interview
  - Specific Interview
CBI Expectations and Powers

- Regulated Financial Services Providers are expected:
  - To ensure staff are fit and proper on an on-going basis
  - To review the firms fitness and probity policies, procedures and practices
  - To document how the issues raised in the Central Bank’s letter have been considered and explain and evidence remedial actions
Actions

- CBI has broad powers of sanction and investigation:
  - Administrative Sanctions Procedure (ASP)
  - Fitness & Probity Regime
- Section 25 - power to conduct an investigation
- Suspension Notice
- Prohibition Notice
Future Focus – Fitness and Probity

- CBI Proposal - Individual Accountability Framework comprising **four elements**:
  - Conduct Standards
  - Senior Executive Accountability Regime
  - Enhancements to the current Fitness & Probity Regime
  - Unified enforcement process

- Ability for individuals to avoid liability for wrongdoing will be limited.
The European Union (Anti Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019

Claire Lord, Partner & Head of Governance and Compliance, Mason Hayes & Curran
Introduction

European Union (Anti-Money Laundering: Ownership of Corporate Entities) Regulations 2019 (the “Regulations”)

• The Regulations are to implement the EU’s Fourth Anti-Money Laundering Directive (Directive 2015/849) (“4AMLD”) as amended.

• Parts 1 and 2 in force from 22 March 2019.

• Part 3, which establishes the “Central Register of Beneficial Ownership of Companies and Industrial & Provident Societies” (the “Central Register”), in force from 22 June 2019.

• Central Register established by Regulations applies only to Companies and Industrial & Provident Societies.
Background

Domestic legislation


• Came into force November 2016.

• Obliged all relevant entities to obtain and hold information on their beneficial owners and to enter that information onto an internal beneficial ownership register.

• New regulations revoke and restate the 2016 Regulations. No changes, some additions to the 2016 Regulations.
Background

Relevant Entities

• Every corporate or other legal entity incorporated in Ireland, with the exception of a company or other body corporate that is:

  • listed on a regulated market that is subject to EU transparency laws; or

  • subject to equivalent international standards which ensure adequate transparency of ownership information
Background

Beneficial owners

- A natural person who owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the relevant entity, or through control via other means.

- 25% plus one share is a sufficient percentage.

- If a relevant entity cannot identify any beneficial owners, having exhausted all possible means, and provided no grounds for suspicion, it shall enter the details of its senior managing officials on its register.

- Senior managing officials “includes a director and a chief executive officer”.


The Regulations
Direct Ownership

Person A
Person B

Irish company

50% 50%
The Regulations

Indirect Ownership

Person A

Person B

50%

50%

Holding company

Irish company

Dublin  London  New York  San Francisco
The Regulations

Indirect Ownership

- Person A
  - Irish company 2 (10%)
    - Irish company 1
      - 100%
      - 18%
The Regulations

Information to be included on the register

- Particulars of each beneficial owner to be included on the beneficial ownership register:
  - Name;
  - Date of birth;
  - Nationality;
  - Residential address; and
  - Nature and extent of the interest held or control exercised.

- Relevant entities to obtain the PPS number of each beneficial owner “to whom such a number has been issued”.

- On-going duty to keep information on the register up-to-date.
The Regulations

Notices

• Regulation 7 Notice – sent to persons who the relevant entity has reasonable cause to believe is the beneficial owner.

• Regulation 9 Notice – sent to persons who the relevant entity has reasonable cause to believe knows who is a beneficial owner or knows the identity of a person/entity likely to have such knowledge.

• Regulation 11 Notice - sent where the relevant entity understands or has reasonable cause to believe that there has been a change to the particulars of a beneficial owner.

• Also obligations on beneficial owner to notify the relevant entity that he or she is a beneficial owner and/or his or her particulars have changed.
The Regulations

Rights of access

- Relevant entity to provide access to its beneficial ownership register, on request, to Garda Síochána, Revenue Commissioners, “competent authorities”, Criminal Assets Bureau and Inspector appointed by ODCE.

- Information can be shared with equivalent bodies in other Member States.

- Relevant entity to provide access to its beneficial ownership register to “designated persons” where relevant entity enters into an “occasional transaction” or a business relationship with them.
The Regulations

Central Register

• Central Register of Companies and Industrial and Provident Societies.

• Will be established with effect from 22 June 2019.

• Existing companies and societies will have 5 months from that date to submit information on beneficial owners.

• Companies and societies incorporated after that date will have 5 months from the date of incorporation to submit information on beneficial owners.
Information to be included on the register

- Particulars of each beneficial owner to be submitted to Central Register:
  - Name;
  - Date of birth;
  - Nationality;
  - Residential address;
  - Nature and extent of the interest held or control exercised; and
  - PPS number (where one has issued)
## The Regulations

### Access to information on Central Register

<table>
<thead>
<tr>
<th>Party</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garda Síochána, Financial Intelligence Unit, Criminal Assets Bureau, Revenue Commissioners, other competent authorities</td>
<td>All information save for PPS numbers</td>
</tr>
<tr>
<td>Designated persons and members of the public</td>
<td>- Name</td>
</tr>
<tr>
<td></td>
<td>- Country of residence</td>
</tr>
<tr>
<td></td>
<td>- Month and year of birth</td>
</tr>
<tr>
<td></td>
<td>- Nature and extent of ownership and control</td>
</tr>
</tbody>
</table>

PPS numbers will be “hashed” to keep them secure and will not be available for inspection.
The Regulations

Other offences in Part 2

- Failure to give proper Regulation 7 notice – Class A fine.
- Failure to give proper Regulation 11 notice – Class A fine.
- Failure by a beneficial owner to give notice – Class A fine.
- Failure by recipient to comply with a notice, or making knowing or reckless false statement in response – Class A fine or up to 12 months imprisonment.
- Failure by relevant entity to keep beneficial ownership register - Class A fine in summary conviction, fine not exceeding €500,000 on indictment.
The Regulations

Part 3 offence for designated persons

• Regulation 20: designated persons must notify the Registrar if:
  • information on a relevant entity’s internal register comes to that designated person’s knowledge; and
  • the designated person forms the opinion that there is a discrepancy between that information and the details on the central register.

• Registrar will ask the relevant entity to correct the register or explain the discrepancy.

• Failure by a designated person to make the report is a criminal offence punishable by a Class A fine.
Trusts

Beneficial ownership register of trusts

- Separate to the regulations that apply to corporate entities.
- Apply to express trusts whose trustees are resident in Ireland or which are otherwise administered in Ireland.
- Trustees obliged to take all reasonable steps to obtain and hold adequate, accurate and current information in respect of trust’s beneficial owners.
- Name, date of birth, nationality, residential address, date entered on register and date ceased to be beneficial owner.
- Includes at least settlors, trustees, protectors, beneficiaries or class of persons in whose interest trust set up and any other natural person exercising ultimate control.
- Access on request to Revenue Commissioners and other “State competent authorities”. 
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3 Territories

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Europe

Asia
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## Cross-Border Distribution of Funds

Sarah Cloonan, Senior Associate, Mason Hayes & Curran

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<tr>
<th>Dublin</th>
<th>London</th>
<th>New York</th>
<th>San Francisco</th>
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Need for Change

- 3% of AIFs
- 37% of UCITS
- €14.3 trillion worth of AUM
- 70% of regulated funds only available in their domestic markets
- Directive
- Regulation
Key Changes to Note

- Local presence
- Discontinuation of marketing
- Pre-marketing:
  “…direct or indirect provision of information or communication on investment strategies or investment ideas……”
- Central database
Reform of Investment Limited Partnership Legislation
Conor Durkin, Partner, Mason Hayes & Curran
Limited Partnerships - the vehicle of choice for Private Equity

Flexible structure – permits capital commitments, carried interest, investor default provisions, excused investors, advisory committee membership etc.

Partnership accounting

Tax transparent vehicle
Private Equity a story of unprecedented growth

Record level $3.41tn total industry assets as at June 2018*

Year-on-year growth in PE sector of over 12% in past 5 years

$432bn total capital secured in 2018

82% of fund managers predict that AUM will increase further over 2019*

*Source Prequin 2019 Prequin Global Private Equity and Venture Capital Report
Reasons for growth of European PE funds

**Investor demand:**
- Struggle for yield
- Preference for regulated funds
- Volatility and turmoil in public markets

**Market Opportunity:**
- Need for financing of the real economy
- Funding gap in the EU
- Regulatory initiatives CMU, ELTIF, EuVECA

**Regulatory environment:**
- AIFMD changed the rules on how PE managers raise capital in the EU (cross border passport)
- PE managers requiring middle and back office functions
- Tax substance rules
Illustration of the domicile of Funds marketed in the EU

Ireland
- Number of authorised funds: 7,351
- Number of ILPs: 6

Luxembourg
- No. of Special Limited Partnerships (SCSp): 1,760

Source:
2. Central Bank, Register of Authorised Investment Limited Partnerships
3. PWC Luxembourg SCSp update
Align the standards and features of the ILP with other fund structures

• Establish umbrella ILPs with segregated liability between sub-funds
• Permit LPAs to be amended with the consent of the majority of the LPs or with a depositary certification
• Permit capital to be returned to LPs in the normal manner without potential for liability on the LP
• Change the public inspection rights under the 1994 LPA
Changes requested by Industry to ILPs

Clarifying rights and obligations
• Expand the list of white list activities that LPs may take undertake without jeopardising their limited liability status
• Allowing LPs to be categorised differently to reflect their status

Updating account of AIFMD and other legislation
• Removing the GP’s liability for loss in reliance upon a prospectus

Best in Class
• Ability to register a dual foreign name
• Permit partnerships to migrate from other jurisdictions
Opportunities for Ireland as a Centre for Private Equity

Ireland as a domicile: language, law and location

Growth drivers remain strong

Fund servicing: PE firms requiring outsourced administration, valuation, reporting and compliance services

Estimated that a 2.5% share of the market for domiciling PE funds would equate to more than 350 funds
Thank you

Questions?

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