Focus on Fund Management Companies in Ireland

In May 2019, Indecon completed a Report on behalf of Irish Funds which captured the impact of the investment funds industry on the Irish economy. The report highlighted the significant contribution that the sector has made to the economy both in terms of employment (Total Employment Impact in 2018 was 32,973) and Tax (Total Contribution to the Irish Exchequer of €837 million).   The report also highlighted the growth in the sector which it attributed to a number of policy and market developments in Europe and internationally, including a number of EU Directives, the international nature of the industry, the expansion of investment strategies and reforms in pension and wider savings in EU and non-EU markets. The report acknowledged the skilled capabilities that have been built in Ireland as a result, to both manage and service investment funds.

"Indecon's independent assessment highlights the successful development, and record of sustained growth, of the funds industry in Ireland since the late 1980s. Industry predictions suggest that business volumes could expand by approximately 22-28% over the next five years." Indecon Assessment of Economic Impact of the Funds Industry on the Irish Economy

It is not surprising therefore that Ireland has become a domicile of choice for many UK based Asset Managers in response to Brexit. Since 2018 over 80 new asset managers have successfully sought authorisation in Ireland. These firms include UCITS Management Companies, AIFMs and MiFID firms. This wave of new authorisations has put the funds industry on the regulatory radar with regard to substance and risk management as firms seek authorisation to perform collective and individual portfolio management and project to manage sizeable portfolios of assets from Ireland. In particular, for Fund Management Companies, this has created a new standard in terms of the roles, both executive and non-executive, time commitments that are expected of individuals in those roles, and risk management and delegate oversight frameworks commensurate with the nature, scale and complexity of the entity seeking authorisation. Where a Fund Management Company was authorised some time ago, and has not sought to amend the authorisation more recently, it may not have been held to the same standard. In order to 'level the playing field', the CBI has indicated that it will look to conduct thematic inspections of existing Fund Management Companies operating in Ireland.

"We in the Central Bank demand compliance at all times with the key underlying principle that the management company, irrespective of the use of delegation, remains the party responsible for all aspects of its business. This means that they must have sufficient substance within the EU and be able to demonstrate, on an on-going basis, that they are fulfilling all their responsibilities. Looking forward, management companies will remain an area of focus for the Central Bank and ESMA, of that I have no doubt." Michael Hodson, Central Bank of Ireland

The CBI applied some focus to Fund Management Companies previously by issuing a questionnaire to understand director time commitments in 2015, which ultimately lead to a consultation paper (CP86) and the Fund Management Companies - Guidance ('the Guidance') in 2016.

The Guidance sets out the criteria expected to be in place to allow Fund Management Companies ("FMCs") (including all UCITS management companies, self-managed UCITS, Alternative Investment Fund Managers and internally managed Alternative Investment Funds) to adequately meet their responsibilities and to oversee the activities of their delegates. It covers six managerial functions which should be captured in a documented framework and embedded in the operations of the firm. Whilst it is not legislation, FMCs have been required to "comply or explain" since the Guidance came into effect.

In a first step in assessing compliance with the Guidance at an industry level, the CBI recently issued a *"Fund Management Company Guidance Questionnaire"* requesting information with regard to how the Guidance was implemented, with a two week timeframe for FMCs to respond.

The questionnaire required firms to provide the details of Directors, Delegates, Designated Persons, along with confirmation as to whether policies, procedures, risk management frameworks and business continuity arrangements were in place. It asked for details in relation to the role of the Organisational Effectiveness Director, the time commitment to this role, the last time resources were discussed at Board level, the last time a Board effectiveness evaluation was undertaken, whether there is a Conflicts of Interest Policy in place for the FMC and whether the FMC is subject to an Internal Audit review at least every three years. It asked about Record Keeping and Procedural Matters, the answers to which will invariably be tested should the FMC be selected for a thematic review.

The questionnaire is clearly seeking to assess whether the risk management and oversight framework in place at the FMC is proportionate to the business model, that the FMC can demonstrate compliance with the Guidance and has appropriate governance structures in place. However, it will serve the dual purpose of assisting the CBI to select FMCs for a thematic review, which could ultimately result in some firms being directed to take remedial action to comply with the Guidance.

Ultimately this could have the impact of requiring some firms to increase their substance in Ireland, and this would give rise to additional business model, human capital and tax considerations which could not be ignored.

Simultaneously, there is an increased regulatory focus in Ireland on Outsourcing Arrangements (which the CBI views as being equivalent to Delegation Arrangements), Senior Executive Accountability, Fitness & Probity, Wholesale Market Conduct Risk and Culture, all of which have the potential to add weight to any discussion around risk based oversight. FMCs should prepare to have this discussion, not simply in the context of the Fund Management Company Guidance, but in consideration of the broader regulatory landscape.

With the success of the Irish funds industry to date, and the anticipated growth of the sector, it has never been more important for Ireland to demonstrate that it has the necessary infrastructure, resources, skills, and regulatory and supervisory framework to nurture the evolution of the sector and continue to play a leading role on the international stage. Deloitte can support FMC's by performing Board Effectiveness & Board Composition Reviews, Culture Assessments, Regulatory Gap Analysis, Responsibilities Mapping including that of the Board, Executives and Designated Persons, developing a Risk Based Oversight Framework, assisting with Policy & Procedure development, developing MI & data analytics, providing Business Model, Tax and Human Capital support and advice as required.

i) https://www.irishfunds.ie/news-knowledge/news/press-release-irish-funds-industry-worth-837m-to-the-irish-exchequer

ii) https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/ucits/guidance/fund-mancos-guidance.pdf?sfvrsn=2

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