



January 2022

## Asset Management in Ireland in 2022: A Year in Preview

### Introduction

While funds and their management companies<sup>1</sup> may still be taking stock after a busy year in 2021, 2022 is shaping up to be an equally demanding year for industry stakeholders.

What follows is an overview of some key dates which should be appearing in your compliance calendar for 2022 and a synopsis of some of the legal developments we can expect in the next twelve months.<sup>23</sup>

---

<sup>1</sup> References to “management companies” or “fund management companies” in this briefing include UCITS management companies, AIFMs, self-managed UCITS funds and internally managed AIF funds unless otherwise indicated.

<sup>2</sup> This briefing does not include filing requirements in respect of any filing where the filing date is determined with reference to the relevant entity’s annual accounting date (such as the filing of annual and semi-annual financial statements with the Central Bank) nor does it address any tax-related deadlines to which funds and fund management companies may be subject. Periodic reviews of matters such as the risk management framework, business plan and policies and procedures of fund management companies as well as any other actions required to be taken under the Irish Funds Corporate Governance Code are also excluded from the remit of this briefing. In addition, it does not address other matters where a set date for compliance has not been applied, including for example (i) the obligation imposed on fund management companies which have chosen to implement a shareholder engagement policy under SRD II to provide shareholders with information on their website on how that policy has been implemented in the previous 12 months or (ii) the [obligation](#) imposed on Irish UCITS management companies (and Irish UCITS SMIC) by the Central Bank to carry out a viability and suitability assessment of each Irish-domiciled UCITS under management when assessing the investment manager’s annual presentation. Irish domiciled managers of MMFs will also be required to report certain prescribed information to the Central Bank of Ireland in accordance with Article 37 of the MMFR on a periodic basis during the course of 2022.

<sup>3</sup> In each case, the dates for filing of returns with the Central Bank are estimated only and may vary from firm to firm. Clients should therefore refer to the firm’s ONR for specific filing date imposed by the Central Bank for each return.

Date	Matter	Suggested action to be taken
1 January 2022	<p><b>Sustainability related disclosures to be included in the periodic reports of funds falling within scope of Article 8 or Article 9 of the SFDR</b></p> <p>Management companies of funds which fall within the scope of Article 8 or Article 9 of the SFDR<sup>4</sup> (<b>ESG Funds</b>) must ensure that any annual financial statements <i>published</i> from 1 January 2022 onwards incorporate required sustainability related disclosures set down in Article 11 of the SFDR and, where relevant, Article 5 or Article 6 of the Taxonomy Regulation<sup>56</sup>. Non-ESG Funds must include a Taxonomy-related disclaimer in annual financial statements published on or after 1 January 2022.</p>	<p>Engage with relevant stakeholders to ensure that all disclosures required to be included under the SFDR and the Taxonomy Regulation are included in the annual financial statements <i>published</i> on or after 1 January 2022.</p>
31 January 2022 <sup>7</sup>	<p><b>Annual confirmation of ownership of UCITS management companies and AIFM</b></p>	<p>Filing of confirmation of ownership to be made with Central Bank of Ireland (<b>Central Bank</b>) by 31 January 2022.</p>
1 February 2022	<p><b>Cash Penalty Regime under the CSDR enters into force</b></p> <p>Under the new regime introduced under Article 7 of the CSDR<sup>8</sup> which is intended to reduce the number of settlement fails within their settlement systems, central securities depositories (<b>CSD</b>) will be required to impose a cash penalty on the participant identified by the CSD as responsible for the relevant settlement fail from 1 February 2022. Participants in the CSD are likely to seek to pass such penalties on to their clients save where the settlement fail is due to their own actions. Although not subject to any direct obligations under the CSDR, management companies and funds under management may be indirectly impacted by the new cash penalties regime. While no harmonised approach as to the allocation of responsibility for penalties incurred due to failed trades in the Irish funds context has emerged to date,</p>	<p>Assess whether funds under management engage in in-scope transactions. If so, engage with all relevant stakeholders to agree a framework under which it is agreed the circumstances in</p>

<sup>4</sup> Regulation (EU) 2019/2088

<sup>5</sup> Regulation (EU) 2020/852

<sup>6</sup> The more prescriptive disclosures which will be required to be included in the annual financial statements of ESG Funds have not yet been finalised and therefore will not be addressed in the annual financial statements published by ESG Funds in 2022.

<sup>7</sup> In each case, the dates for filing of returns with the Central Bank are estimated only and may vary from firm to firm. Clients should therefore refer to the firm's ONR for specific filing date imposed by the Central Bank for each return.

<sup>8</sup> Regulation (EU) No 909/2014

Date	Matter	Suggested action to be taken
	<p>management companies will need to engage with relevant stakeholders to establish the possible implications of the new cash penalties on themselves and funds under their management. For further information, please refer to our recent <a href="#">briefing</a> on the topic.</p>	<p>which each relevant stakeholder will be responsible for bearing such cash penalties and the circumstances (if any) in which the cash penalty will be borne by the relevant fund.</p>
<p><b>1 February 2022</b></p>	<p><b>Amendments to Instrument of Incorporation of UCITS ICAV Funds</b></p> <p>Under amendments introduced to the ICAV Act via the Investment Limited Partnership (Amendment) Act 2020, the sole objects clause contained in the instrument of incorporation of any existing UCITS ICAV must be updated to reflect the specific wording used in the UCITS Regulations<sup>9</sup>.</p>	<p>Ensure that any required change to the UCITS ICAV instrument of incorporation are made by 1 February 2022.</p>
<p><b>2 February 2022</b></p>	<p><b>ESMA Guidelines on Marketing Communications</b></p> <p>In a <a href="#">Notice of Intention</a> published by it on 1 October 2021, the Central Bank confirmed that it expects all Irish authorised management companies to comply with the <a href="#">ESMA Guidelines on Marketing Communications (Guidelines)</a> with effect from 2 February 2022.</p> <p>Management companies are therefore responsible for ensuring that any marketing communications relating to a fund under management (whether issued by themselves or another third party) complies with the Guidelines from that date. Marketing communications will need to be reviewed to ensure that risks and rewards are disclosed in a manner consistent with the Guidelines, that the marketing communications are fair, clear and not misleading taking into account the criteria set down in the Guidelines and that information on costs, past performance and expected future performance and sustainability-related aspects of the communications comply with the Guidelines.</p>	<p>Conduct a review of all marketing communications relating to funds under management and make necessary changes to comply with Guidelines by 2 February 2022.</p>
<p><b>18 February 2022</b></p>	<p><b>Central Bank’s consultation on Irish domiciled property funds closes</b></p> <p>The Central Bank has recently been examining the Irish property fund sector in close detail with a particular focus on leverage and liquidity mis-match as two potential sources of financial vulnerability. On 25 November 2021, the Central Bank published a consultation paper in which it outlined proposals to impose certain leverage limits on Irish domiciled funds which invest over 50% directly or indirectly in Irish property assets. In the consultation paper, the Central Bank has</p>	<p>If desired, submit a response to the consultation or get in touch with your usual Dillon Eustace contact to feed into</p>

<sup>9</sup> As set down in Regulation 4(3)(a) of the European Communities (Undertakings for Investment in Transferable Securities) Regulations 2011

Date	Matter	Suggested action to be taken
	<p>proposed a 50% leverage limit for all in-scope funds to be determined by the ratio of total assets to total liabilities (or its equivalent applying the AIFMD gross or commitment methodologies). The Central Bank’s consultation paper also proposes that in-scope funds should also comply with additional guidance to limit liquidity mismatch.</p> <p>For a detailed overview of the proposals put forward by the Central Bank, please refer to our <a href="#">analysis</a> of the consultation paper.</p>	<p>our response to the consultation.</p>
<p><b>28 February 2022<sup>10</sup></b></p>	<p><b>Fund Profile Return</b></p> <p>A fund profile return containing information for each sub-fund or stand-alone fund authorised by the Central Bank as at 31 December 2021 must be filed with it via its ONR system no later than 28 February 2022. The Central Bank has issued <a href="#">guidance</a> to assist in making these filings.</p>	<p>Fund Profile Return to be filed with the Central Bank on or before 28 February 2022.</p>
<p><b>28 February 2022<sup>11</sup></b></p>	<p><b>Fitness &amp; Probity Filings for Investment Funds, UCITS management companies and AIFMs</b></p> <p>Under its fitness and probity regime, the Central Bank requires each regulated financial service provider (“<b>RFSP</b>”) and investment fund regulated by it to submit a confirmation to the Central Bank on an annual basis which lists all individuals performing pre-controlled functions (<b>PCF</b>) and confirms that each PCF complies with those standards and continues to abide by those standards<sup>12</sup>.</p> <p>Related to fitness and probity more generally, following the <a href="#">Notice of Intention</a> which it published in September 2021, we expect the Central Bank to make some amendments to the list of PCFs, including for example the introduction of new stand-alone PCF roles in respect of independent non-executive directors and head of anti-money laundering and counter-terrorist financing. In that Notice of Intention, the Central Bank has indicated that all impacted regulated financial service firms (which will include Irish fund management companies and Irish domiciled funds) will be required to submit an “in-situ confirmation” within 6 weeks of any such amending regulations coming into effect.</p>	<p>F&amp;P confirmation to be filed with the Central Bank by the date designated by the Central Bank.</p> <p>In-situ confirmation to be filed with the Central Bank within 6 weeks of amending regulations coming into effect.</p>

<sup>10</sup> Please refer to the firm’s ONR for specific filing date imposed by the Central Bank for each return as this may vary from firm to firm.

<sup>11</sup> In each case, the dates for filing of returns with the Central Bank are estimated only and may vary from firm to firm. Clients should therefore refer to the firm’s ONR for specific filing date imposed by the Central Bank for each return.

<sup>12</sup> It is worth having regard to the [Dear Chair Letter](#) published by the Central Bank in November 2020 in which the Central Bank re-emphasised the obligation to conduct due diligence on an ongoing basis to ensure that individuals performing any controlled function (including PCF) continue to comply with the fitness and probity regime.

Date	Matter	Suggested action to be taken
<p><b>31 March 2022 (and 30 June 2022, 30 September 2022 and 31 December 2022)</b></p>	<p><b>Establishment of principal adverse impact reporting framework under the SFDR for in-scope management companies</b></p> <p>Management companies who are either required or have chosen to comply with the entity-level principal adverse sustainability impact reporting regime under Article 4 of the SFDR will be required to publish a report on the principal adverse impacts of investment decisions on sustainability factors using specific indicators set down in the regulatory technical standards supplementing the SFDR on or before 30 June 2023. This report must cover a reference period which runs from 1 January 2022 to 31 December 2022. Under the draft regulatory technical standards published by the European Supervisory Authorities in February 2021, this assessment must be based on at least the average of four calculations made by the management company on 31 March, 30 June, 30 September and 31 December. Therefore if the draft regulatory technical standards are finalised in the manner proposed by the ESAs, a framework for capturing required data should be established and in place by 31 March 2022.</p>	<p>In-scope management companies should consider engaging with internal stakeholders and selected data vendor(s) to ensure that they are in a position to capture all required data to prepare the PAI report in accordance with the draft regulatory technical standards once finalised by the European Commission.</p>
<p><b>1 July 2022</b></p>	<p><b>Update of PRIIPS KID published by in-scope RIAIF/QIAIFs in line with revised Level 2 measures</b></p> <p>Under the PRIIPS Regulation<sup>13</sup>, before any QIAIF or RIAIF is made available to EEA retail investors (<b>In-Scope AIF</b>), a PRIIPS KID for the relevant fund must be prepared and published on a website. The PRIIPS Regulation is currently supplemented by detailed Level 2 measures which are set down in Commission Delegated Regulation (EU) 2017/653 (<b>Existing PRIIPS Level 2 Measures</b>).</p> <p>Commission Delegated Regulation 2021/2268,<sup>14</sup> which amends the Existing PRIIPS Level 2 Measures, will apply from 1 July 2022 meaning that all In-Scope AIFs will be required to publish a PRIIPS KID which complies with the revised Level 2 measures from that date.</p> <p>Changes made to the Existing PRIIPS Level 2 Measures include significant changes to the existing rules governing the methodology and presentation of performance scenarios, the presentation of costs, the methodology for the calculation of summary cost indicators and the methodology required to calculate transaction costs, as well as introducing new disclosure obligations for In-Scope AIFs.</p>	<p>Managers of In-Scope AIFs must ensure that the PRIIPS KID is updated to comply with the revised Level 2 measures and published by 1 July 2022.</p>

<sup>13</sup> Regulation 1286/2014/EU

<sup>14</sup> Accessible from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2268&from=EN>

Date	Matter	Suggested action to be taken
8 July 2022	<p><b>Covered Bonds Framework for UCITS funds enters into force</b></p> <p>The European Union (Covered Bonds) Regulations 2021 (<b>Irish Covered Bonds Regulation</b>), which transpose the new Covered Bonds Directive<sup>15</sup> which creates a new EU framework for covered bonds into Irish law, will come into effect on 8 July 2022.</p> <p>Under the UCITS framework, investment in covered bonds benefit from higher diversification limits under which a UCITS may invest up to 25% of net assets in any one covered bond while the total value of investments by a UCITS in covered bonds issued by one issuer cannot exceed 80% of the net assets of that UCITS.</p> <p>The Covered Bonds Directive creates a uniform framework setting down specific structural features which must be satisfied by bonds issued by EU credit institutions in order for those bonds to be classified as “covered bonds” under the UCITS framework. These include specific conditions relating to eligible cover assets, composition of the cover pool, coverage and liquidity requirements.</p> <p>From 8 July 2022, an Irish UCITS will only be able to avail of the higher investment restrictions applicable to covered bonds where they are satisfied that the relevant bonds issued after that date meet the specific criteria set down in the Covered Bonds Directive</p> <p>The new framework is considered in greater detail in our <a href="#">briefing</a> on the topic.</p>	<p>UCITS management companies and delegate investment managers should implement necessary investment due diligence arrangements to ensure that any UCITS which wishes to avail of the higher diversification limits applicable to covered bonds only invests in covered bonds issued after that date which satisfy the criteria set down in the Covered Bonds framework from 8 July 2022 onwards.</p>
1 August 2022	<p><b>New sustainability-related requirements apply to Fund Management Companies under changes to the AIFMD and UCITS frameworks</b></p> <p>From 1 August 2022, UCITS management companies and AIFMs will be required to comply with new sustainability-related rules being introduced to the UCITS<sup>16</sup> and AIFMD frameworks<sup>17</sup></p> <p>These include an obligation to take sustainability risks into account when conducting due diligence on investments, to update existing risk management procedures to incorporate the assessment of material sustainability risk which may arise for funds under management, to identify conflicts of interests which arise as a result of integration of sustainability</p>	<p>Initiate project implementation plans to ensure compliance with the new sustainability-related requirements by 1 August 2022.</p>

<sup>15</sup> Directive (EU) 2019/2162

<sup>16</sup> Commission Delegated Directive (EU) 2021/1270 amends Directive 2010/43/EU. The Irish UCITS Regulations will need to be updated by this date to transpose the new rules into Irish law.

<sup>17</sup> Commission Delegated Regulation (EU) 2021/1255 amends Delegated Regulation (EU) 231/2013 and, as an EU regulation, will have direct effect in Ireland from 1 August 2022.

Date	Matter	Suggested action to be taken
	<p>risks in the processes, systems and internal control of the relevant management company and to take sustainability risk into account in the organisational structure of the management company. The new rules also require senior management to assume responsibility for the integration of sustainability risks in the investment and risk management processes and to ensure that it retains adequate resources and expertise for the integration of sustainability risk.<sup>18</sup></p>	
<p><b>2 August 2022</b></p>	<p><b>New obligations imposed on EU investment firms to consider sustainability preferences of clients when conducting suitability assessment.</b></p> <p>Under existing MiFID rules, any EU investment firm providing either (i) portfolio management or (ii) investment advice services to a client must carry out a suitability assessment prior to the provision of the relevant service.</p> <p>From 2 August 2022, in-scope firms will be required to obtain information about the client’s “sustainability preferences” as part of this suitability assessment. This information must then be taken into account by the investment firm when considering what financial products to offer to the relevant client. This new framework, and in particular the definition of “sustainability preferences”, is likely to have a considerable impact on the distribution of ESG Funds within the EU and will require management companies to provide any investment firm which distributes their funds within the EU with sustainability-related information for each fund.</p>	<p>Management companies should engage with key EU distributors to establish their information needs so as to ensure that such distributors are in receipt of all required information in advance of 2 August 2022. The new MiFID rules on sustainability preferences should also be taken into account when establishing new ESG funds if it is intended to appoint an EU investment firm to market the fund within the EU.</p>
<p><b>1 September 2022</b></p>	<p><b>Final stage of the phase-in for regulatory initial margin under EMIR takes effect</b></p> <p>On 1 September 2022 the final stage of the phase-in (<b>Phase 6</b>) of the rules for regulatory initial margin (<b>IM</b>) will take effect. This Phase 6 will capture counterparties with an aggregate average notional amount (AANA) of €8bn or greater. Counterparties falling within scope, including AIFs and UCITS, will be required to comply with the EMIR IM requirements as and from that date.</p>	<p>Where applicable, ensure appropriate framework is put in place to comply with the IM requirement under Phase 6 from 1 September 2022.</p>

<sup>18</sup> Implementation plans put in place in order to address these changes may also address the [Dear Chair Climate Risk Letter](#) sent to all Irish regulated financial service providers by the Central Bank in November 2021.

Date	Matter	Suggested action to be taken
22 November 2022	<p><b>Amendments to MiFID product governance rules enter into force</b></p> <p>Under amendments to the MiFID product governance rules which will apply from 22 November 2022<sup>19</sup>, the assessment of the potential target market for any fund which must be carried out by the product manufacturer must include any sustainability related objectives with which the fund is compatible. The relevant product manufacturer must also ensure that any distributors of the fund are provided with adequate information of the sustainability factors of the fund so that the distributor can, in turn, provide the relevant information to its clients or potential clients.</p> <p>EU investment firms which act as distributors must, under the revised product governance rules, now be satisfied that the funds offered are compatible with any sustainability related objectives of the identified target market.</p>	<p>EU investment firms may, where relevant, require input from fund management companies on identification of potential target market for funds under management, taking into account the sustainability related objectives of the relevant fund.</p>
Quarter 4 2022	<p><b>Preparation for entry into force of additional disclosure obligations under Level 1 of the SFDR and the Taxonomy Regulation and Level 2 measures under the SFDR (including Taxonomy-related disclosures)</b></p> <p>A key focus for Quarter 4 2022 for management companies with ESG Funds under management is likely to be the implementation of a project plan to:</p> <ul style="list-style-type: none"> <li>(i) where relevant, gather the data required to re-calculate the extent to which the relevant fund can be considered Taxonomy-aligned taking into account the technical screening criteria applicable to the additional four environmental objectives set down in the Taxonomy Regulation which enter into force on 1 January 2023. This will only be relevant to those ESG Funds which fall within the scope of the detailed disclosure obligations under Article 5 or Article 6 of the Taxonomy Regulation;</li> <li>(ii) gather all other data required to populate the relevant ESG annex contained in the finalised regulatory technical standards published under the SFDR which must be annexed to (i) the fund supplement and (ii) the annual financial statements of all ESG Funds under management from 1 January 2023 onwards<sup>20</sup>;</li> <li>(iii) ensure that the fund supplement (or prospectus) is finalised, approved internally and noted by the Central Bank on or before 1 January 2023<sup>21</sup> and, where required, filed with competent authorities in jurisdictions</li> </ul>	<p>Monitor progress of relevant regulatory technical standards to be published under both the SFDR and the Taxonomy Regulation.</p> <p>Where relevant, engage with data vendors to ensure adequate access to data required to comply with relevant disclosure obligations</p> <p>Implement an appropriate action plan involving all relevant stakeholders to</p>

<sup>19</sup> The new product governance rules have been introduced under Commission Delegated Directive (EU) 2021/1269

<sup>20</sup> This will include incorporating, where relevant, disclosures required under Article 7(1) of the SFDR.

Date	Matter	Suggested action to be taken
	<p>where the fund is registered for sale; and</p> <p>(iv) update the management company’s website to comply with the additional disclosure obligations set down in the finalised regulatory technical standards published under the SFDR which will apply from 1 January 2023.</p>	<p>ensure that disclosure obligations which apply from 1 January 2023 are complied with in full by that date.</p>
<p><b>27 December 2022</b></p>	<p><b>Deadline for putting in place new “third country standard contractual clauses” to govern transfer of personal data outside of the EEA</b></p> <p>The transfer of personal data to third countries will continue to be an area of data protection focus for fund management companies in 2022.</p> <p>In June 2021, the European Commission published new “<a href="#">Third Country SCCs</a>” as a safeguard which can be used to legitimise the transfers of personal data outside of the EEA. The new Third Country SCCs have been revised in line with GDPR requirements and to address some of the main issues identified in the Schrems II judgment. The standard contractual clauses from the old regime were repealed on 27 September 2021 and the new Third Country SCC must be used for any new arrangement involving the transfer of personal data outside the EEA after that date unless the underlying processing activities change before 27 December 2022, in which case the deadline for entry into force of the Third Country SCC is the date of implementing the changes to the processing activities.</p> <p>Organisations which have entered into standard contractual clauses under the old regime to legitimise the transfer of personal data outside of the EEA will have until 27 December 2022 to replace these contractual provisions with the new Third Country SCC.</p> <p>Further details on the new Third Country SCCs and supplementary measures can be accessed in our <a href="#">separate briefing</a> on the topic<sup>22</sup>.</p>	<p>Identify all existing third country transfer arrangements governed by old standard contractual clauses and replace same with Third Country SCCs by 27 December 2022.</p>

<sup>21</sup> This may be facilitated by a fast-track filing process by the Central Bank similar to that implemented for SFDR Level 1 and Taxonomy Level 1 filings.

<sup>22</sup> It is worth noting that the European Commission adopted a time limited adequacy decision in favour of the UK on 28 June 2021. The UK Adequacy Decision deemed the UK to have an essentially equivalent level of data protection to that guaranteed under EU law. As a result, personal data may currently continue to flow freely from the EU to the UK, as a third country, without any additional safeguards, such as the Third Country SCCs, being put in place under Chapter V of the GDPR.

Date	Matter	Suggested action to be taken
31 December 2022	<p><b>Existing UCITS/RIAIF Multi-Manager Funds must update performance fee calculation methodology to align with ESMA's Q&amp;A of July 2021 on Performance Fees in Multi-Manager UCITS/RIAIFs</b></p> <p>In a revised <a href="#">Central Bank UCITS Q&amp;A</a> published on 20 December 2021, the Central Bank confirmed that it expected all UCITS/RIAIF multi-manager funds established after that date to comply with the ESMA Q&amp;A on UCITS/ESMA Q&amp;A on AIFMD of July 2021 relating to performance fees in multi-manager UCITS/RIAIFs<sup>23</sup> (<b>ESMA Q&amp;A</b>) immediately.</p> <p>UCITS/RIAIF multi manager funds established before 20 December 2021 have until 1 January 2023 to align their performance fee models with the ESMA Q&amp;A under which an individual portfolio manager appointed by the management company to manage a portion of the assets of the relevant fund cannot receive a performance fee where there has been a global underperformance of the relevant fund notwithstanding that the portfolio manager has over-performed during the relevant reference period.</p>	<p>Managers of existing UCITS/RIAIF multi-manager funds which are subject to a performance fee must update the performance fee methodology to align with the ESMA Q&amp;A and make related changes to the fund prospectus by 1 January 2023. In implementing an action plan for this, management companies should factor in prior review by the Central Bank and that shareholder approval to any such changes may be required.</p>
31 December 2022	<p><b>ESMA Guidelines on Cloud Outsourcing</b></p> <p>Fund management companies should assess whether they could fall within the scope of the <a href="#">ESMA Guidelines on Cloud Outsourcing</a> (the "<b>Cloud Outsourcing Guidelines</b>") with respect to all existing cloud outsourcing arrangements which were entered into before 31 July 2021<sup>24</sup> (<b>Existing Cloud Outsourcing Agreement</b>) and ensure that any such arrangements are updated in line with the Cloud Outsourcing Guidelines by 31 December 2022.</p>	<p>Fund management companies should ensure that any Existing Cloud Outsourcing Agreement is updated to comply with the Cloud Outsourcing Guidelines by 31 December 2022.</p>

<sup>23</sup> Accessible from [https://www.esma.europa.eu/sites/default/files/library/esma34\\_43\\_392\\_qa\\_on\\_application\\_of\\_the\\_ucits\\_directive.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34_43_392_qa_on_application_of_the_ucits_directive.pdf)

<sup>24</sup> Any cloud outsourcing arrangements entered into, renewed or amended after 31 July 2021 were required to comply with the Cloud Outsourcing Guidelines from the date of the relevant agreement

## Legislative and Regulatory Developments and Areas of Focus in 2022

### Sustainable Finance

In addition to the upcoming deadlines outlined above, fund management companies are likely to be monitoring other developments within the sustainable finance sphere closely during 2022. The following are likely to be of particular interest:

(i) *Finalising of draft regulatory technical standards under the SFDR*

Following multiple delays, it is expected that the European Commission will publish its finalised regulatory technical standards under the SFDR (which will include Taxonomy-related disclosures required of in-scope ESG Funds) shortly which should assist fund management companies in finalising their SFDR implementation plans for the year ahead.

(ii) *Central Bank Thematic Review*

The Central Bank has confirmed that it intends to carry out a thematic review in 2022 of the implementation of the SFDR and Taxonomy Regulation by fund management companies in which it will closely scrutinise how investment funds and their management companies are complying with the disclosure obligations introduced under the sustainable finance framework.

(iii) *EU Taxonomy Complementary Delegated Act*

In a press release published on 1 January last, the European Commission confirmed that work has begun on a “Taxonomy Complementary Delegated Act” which will complement the existing EU Taxonomy Climate Delegated Act<sup>25</sup> and which will include gas and nuclear activities within the Taxonomy framework under “clear and tight conditions”. The European Commission intends to adopt the Taxonomy Complementary Delegated Act later this month with the European Parliament and the Council then having four months to scrutinise the legal text.

(iv) *EU's Renewed Strategy for Sustainable Finance*

In its Renewed Strategy for Sustainable Finance published on 6 July 2021 (**Renewed Strategy for Sustainable Finance**), the European Commission outlined a number of areas of focus which will be of interest to fund management companies.

Of particular note for those with “Article 8” funds under management is the intention of the European Commission to consider the introduction of minimum sustainability criteria for such financial products, a proposal which the Central Bank indicated in a speech in November 2021 it strongly supported. The Renewed Strategy for Sustainable Finance also saw the publication of a legislative proposal for the creation of an “EU Green Bond” standard which is intended to create a

---

<sup>25</sup> Commission Delegated Regulation 2021/2139 which is available from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2139&from=EN>

high-quality voluntary standard available to all issuers to help attract sustainable investment. The progress of this legislative proposal is likely to be monitored closely by management companies with bond funds under management.

(v) *Corporate Sustainability Reporting Directive*

While not expected to apply until 2023, fund management companies are likely to monitor developments relating to the proposed Corporate Sustainability Reporting Directive<sup>26</sup> (**CSRD**) carefully in the coming year. Under the current proposal, the sustainability reporting requirements set down in the existing Non-Financial Reporting Directive<sup>27</sup> will be revised and extended to apply to all EU “large” companies (whether listed or not and regardless of the number of employees) and all EU listed companies (including listed SMEs but excluding listed micro-companies) (**In-Scope Companies**). If implemented as proposed, the CSRD will result in a far wider category of EU companies being required to incorporate sustainability-related information in the non-financial statement included in their annual financial statements. This reporting regime should assist fund management companies in complying with sustainability related disclosures to the extent that funds under management invest in In-Scope Companies.

## Outsourcing and Operational Resilience

Following consultations earlier in 2021, the Central Bank published its finalised cross-industry guidance on [outsourcing \(Outsourcing Guidance\)](#) and [operational resilience \(Operational Resilience Guidance\)](#) in December 2021, both of which apply to Irish management companies.

### *Outsourcing Guidance*

The Outsourcing Guidance applies from 17 December 2021 however the Central Bank acknowledged in its feedback statement that the supervisory approach to its implementation would be “*mindful of the adjustments to be made by firms relative to the nature, scale and complexity of the use of outsourcing as an element of their business model*”.

2022 is therefore likely to see Irish fund management companies assessing the implications of the Outsourcing Guidance on their business models and outsourcing arrangements and implementing appropriate changes to governance arrangements as regards the appointment and continued oversight of outsourced service providers in line with regulatory expectations. To the extent not already in place, management companies are also required to prepare a documented outsourcing strategy and documented outsourcing policy. A review of existing contracts in place with outsourced service providers to determine any changes to be made in order to address the Outsourcing Guidance will also need to be carried out.

For a detailed analysis of the implications of the Outsourcing Guidance for Irish fund management companies, please refer to our recent [briefing](#).<sup>28</sup>

---

<sup>26</sup> Available from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189&from=EN>

<sup>27</sup> Directive 2014/95/EU

<sup>28</sup> A separate briefing on the implications of the Outsourcing Guidance on other fund service providers is available from <https://www.dilloneustace.com/legal-updates/central-bank-guidance-on-outsourcing-implications-for-depositaries-and-fund-administrators> .

## Operational Resilience Guidance

Separately, Irish fund management companies must be in a position to demonstrate that they have revised their governance and risk management frameworks so that they meet the regulatory expectations set down by the Central Bank on management of operational risk and resilience in its Operational Resilience Guidance “*within an appropriate timeframe*”<sup>29</sup>. This will involve ensuring that the board and senior management take ownership of the operational resilience framework, identifying critical or important business services and setting of impact tolerances for each of these identified services and continuously reviewing how the fund management company responds and adapts to disruptive or potentially disruptive events so that lessons learned can be incorporated into operational improvements to continually enhance its operational resilience.

The Operational Resilience Guidance is considered in greater detail in our [briefing](#) on the topic.

## Digital Operational Resilience Act Framework

At a European level, the European Commission’s legislative proposals for the establishment of a regulatory framework on digital operational resilience (referred to as “DORA”) are currently being considered by the European Parliament and Council<sup>30</sup>. Under current proposals, UCITS management companies and AIFMS will be required to ensure that they can withstand all types of ICT-related disruptions and threats, in order to prevent and mitigate cyber threats. While the proposed regulation and directive underpinning the DORA framework are expected to be finalised and enter into force in 2022, they are not expected to apply until 2024/2025.

## Industry wide review of resourcing and governance of Irish management companies

Following on from its [letter to industry](#) issued in October 2020 in which the Central Bank set down its minimum expectations in relation to resourcing and governance arrangements of fund management companies<sup>31</sup> (Central Bank Findings), all Irish fund management companies were required to formulate an action plan to address any deficiencies in their existing framework in light of the Central Bank’s Findings by the end of Quarter 1 2021. The substance requirements set down by the Central Bank in the Central Bank Findings, which already meet the substance requirements proposed by the European Commission in its recent proposal to amend the AIFMD and UCITS [framework](#) discussed below, have resulted in many of the Irish domiciled self-managed funds convert to externally managed funds in the course of 2021. Many Irish management companies have also increased resources and operational capacity during 2021 in response to the Central Bank Findings.

The Central Bank has indicated that in the course of 2022 it will conduct a further “industry wide review” to assess the adequacy of actions taken by entities in response to the Central Bank Findings. Management companies can therefore expect continued scrutiny of the adequacy of their resources, governance arrangements and operational capacity by the Central Bank in 2022<sup>32</sup>.

---

<sup>29</sup> The Operational Resilience Guidance was published by the Central Bank on 1 December 2021 with the Central Bank noting that it expects “*firms to be actively and promptly addressing operational resilience vulnerabilities and be in a position to evidence actions/plans to apply the Guidance at the latest within two years of its being issued.*”

<sup>30</sup> A copy of the European Commission’s proposal for a regulation on digital operational resilience for the financial sector is available from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0595&from=EN> while a copy of the proposed related directive (which will amend the UCITS and AIFMD directives) is available from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0596&from=EN>

<sup>31</sup> Fund management companies refers to Irish-regulated UCITS management companies, AIFMS, self-managed UCITS and internally managed AIF.

<sup>32</sup> ESMA has also indicated that it intends to carry out a peer review of how national competent authorities have handled re-location to the EU27 following Brexit in the course of 2022.

## Private Equity Funds/Investment Limited Partnership Regime

Following the re-vamp of the Irish investment limited partnership regime which entered into force on 1 February 2021, it is expected that 2022 will continue to see an increase in the number of investment limited partnerships being established in Ireland to house global private equity, venture capital, private debt and real estate strategies. In this regard, the recent clarity provided by the Central Bank in an updated [Central Bank AIFMD Q&A](#) on its requirements in circumstances where a non-discretionary investment advisor is appointed to private equity or real estate structures (whether established as investment limited partnerships, ICAVs or other legal structures) is likely to also assist in the continued growth of the ILP and the Irish private equity and real estate sector more generally during the next 12 months.

## Preparation by UCITS management companies for application of the PRIIPS regime to UCITS from 1 January 2023

Following significant pressure from industry, the application of the PRIIPS regime to UCITS funds which are made available to EEA retail investors (**In-Scope UCITS**) has been delayed until 1 January 2023<sup>33</sup>. Notwithstanding this welcome delay, management companies of In-Scope UCITS can expect to spend significant time and resources during the course of 2022 preparing for the transition to the PRIIPS regime on 1 January 2023 given the key differences between the UCITS KIID which is currently published by UCITS funds and the PRIIPS KID which will require management companies to gather significantly more data in order to populate the PRIIPS KID correctly. Under the PRIIPS regime, UCITS funds will be required to include forward looking performance scenarios and will also be required to use different costs methodologies and provide more detailed costs disclosures to those currently made in the UCITS KIID document. For a more detailed overview of the key differences between the UCITS KIID and the PRIIPS KID and the steps which will need to be taken by management companies of In-Scope UCITS in order to comply with the new regime from 1 January 2023, please refer to our [briefing](#) on the topic<sup>34</sup>.

## Regulatory Spotlight on Costs and Performance in UCITS funds

In January 2021, ESMA announced its intention to launch a common supervisory action (“**CSA**”) with E.U. national competent authorities on the supervision of costs and fees of UCITS during 2021 in order to assess the compliance of UCITS management companies with (i) the relevant cost-related provisions in the UCITS framework and (ii) the obligation of not charging investors with undue costs as well as to ensure greater convergence by national competent authorities in the supervision of costs. The roll-out of the CSA saw the Central Bank analysing information provided by UCITS management companies on costs and fees borne by UCITS funds under management and engaging directly with certain UCITS management companies to assess their compliance with cost-related provisions of the UCITS framework.

The Central Bank indicated in a [speech](#) delivered in November 2021 that it will publish its findings from the CSA in due course meaning that the regulatory focus on costs and performance in UCITS funds will continue this year with the Central Bank reiterating in that speech its expectation that UCITS management companies have structured pricing processes in place to periodically review the level of applicable fees and costs borne by UCITS funds under management.

---

<sup>33</sup> This delay was implemented via Regulation ((EU) No 2021/2259 which is available from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2259&from=EN>

<sup>34</sup> Separately the European Supervisory Authorities must provide a report to the European Commission on their recommendations regarding a review of the PRIIPS Regulation by 30 April 2022 in order to inform the European Commission’s review of the PRIIPS Level 1 framework. The European Parliament has requested the European Commission to provide a report and, if appropriate, a proposal to address the existing limitations within the PRIIPS Level 1 framework, to it and the Council of Europe “as a matter of urgency”.

## Progression of reforms to the UCITS and AIFMD frameworks

In November 2021, the European Commission published its [legislative proposal](#) to amend both the UCITS and AIFMD frameworks (Proposal). The Proposal includes the introduction of minimum substance requirements applicable where an EU management company delegates functions to a third country entity as well as an enhanced regulatory supervision framework for third country delegation arrangements. The European Commission has also proposed new rules governing the use of liquidity management tools which will apply to both management companies and competent authorities as well as a new pan-EU loan-origination framework under AIFMD. The Proposal also introduces legislative changes under which UCITS management companies will be required to report certain information to their national competent authority for the first time whilst the scope of reporting required to be made by AIFMs to national competent authorities under the existing framework will be expanded in order to allow national competent authorities to better monitor systemic risk.

2022 will see the Proposal being scrutinised by the European Parliament and the Council of Europe. Once such reviews have been independently carried out, political agreement on a finalised agreed legislative text must then be reached which is unlikely to be published before 2023. For a detailed analysis of the Proposal please refer to our [briefing](#) on the topic.

## Liquidity Management

The regulatory spotlight on liquidity management by both the Central Bank and other regulatory authorities in 2021 looks set to continue this year, with the Central Bank noting in a [speech](#) in November that liquidity risk management will remain an area of regulatory focus and that internationally, regulators are progressing further initiatives in this area. On a domestic front, the Central Bank is likely to assess the adequacy of the steps taken by UCITS management companies to enhance their liquidity risk management frameworks in response to its [Dear Chair](#) letter issued to all UCITS management companies in May of last year in which it required all Irish authorised UCITS management companies to conduct a specific review of their liquidity risk management systems by reference to the findings set out in its letter and in [ESMA's public statement](#) on the results of the 2020 common supervisory action on UCITS liquidity risk management.

ESMA has also [noted](#) in its work programme for 2022 that its “*market risk monitoring and analysis will continue to focus on liquidity [....] in investment funds*” while IOSCO has also [committed](#) to continue its work on liquidity risk management in open-ended funds in 2022.

## Review of the Money Market Fund Regulation

Under the Money Market Fund Regulation<sup>35</sup> (**MMFR**), the European Commission is required to review the adequacy of the money market fund regulation framework by 21 July 2022.

ESMA is expected to deliver an opinion on suggested reforms to the MMFR to the European Commission following its [consultation](#) which it initiated in March 2021 (**Consultation**). In that Consultation, ESMA considered the stress experienced by money market funds (**MMF**) in March 2020 and put forward four types of potential reforms of the MMFR. Reforms proposed by it in the Consultation include a decoupling regulatory thresholds from suspensions/gates to limit liquidity stress, imposing an obligation on

---

<sup>35</sup> Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds

MMF managers to use certain liquidity management tools, reviewing requirements around liquidity buffers as well as reviewing the status of certain types of MMF such as Public Debt Constant NAV (CNAV) money market funds and Low Volatility NAV (LVNAV) money market funds. ESMA also sought feedback on whether the role of sponsor support should be modified.

ESMA is expected to deliver its opinion on the review of the MMFR to the European Commission shortly. In conducting its review of the MMFR in the first half of this year, the European Commission may also have regard to the ESRB's [Issues Note on MMFR](#) published on 1 July 2021 which sets out its views on potential reforms of MMF as well as the FSB [Final Report on Policy Proposals to Enhance Money Market Fund Resilience](#) published in October 2021.

### ESMA CSA on Valuation Issues in Investment Funds

In its [Annual Work Programme](#) for 2022, ESMA notes that it intends to conduct a common supervisory action on valuation issues in investment funds in 2022. No further details have been released to date by ESMA or the Central Bank. However valuation issues have been identified as a contributing factor to the market stresses experienced in March 2020. It is therefore likely that the common supervisory action will focus on gathering information on, and identifying any weaknesses in, valuation practices implemented by fund management companies across the EU.

### Developments impacting Fund Management Companies with MiFID “Top-Up” Permissions

#### (i) *ESMA Guidelines on MiFID II appropriateness and execution-only requirements*

In January 2022, ESMA published the [final report](#) on its guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements (**MiFID II Appropriateness Guidelines**). The MiFID II Appropriateness Guidelines will be of relevance for any AIFM which has MiFID “top-up” permissions to provide the ancillary service of receipt and transmission of orders in relation to financial instruments. Matters addressed by the MiFID II Appropriateness Guidelines include (i) obtaining information from clients on their knowledge and experience; (ii) details on those arrangements necessary to understand both the client and the investment products; (iv) the assessment of appropriateness; and (v) warnings to clients.

The MiFID II Appropriateness Guidelines should be considered by “in scope” AIFMs to ensure that their procedures and processes around the application of the appropriateness requirements comply with ESMA’s expectations as articulated in the MiFID II Appropriateness Guidelines which will apply six months from the date on which they are published on the ESMA website in all EU official languages.

#### (ii) *ESMA expected to publish updated Guidelines on MiFID II Suitability Rules*

On 21 July 2021, ESMA issued a [public statement](#) presenting the results of the 2020 common supervisory action on MiFID II suitability requirements. It is anticipated that ESMA will update its guidelines on MiFID II suitability requirements on foot of this common supervisory action during 2022. This will be of relevance to fund management companies to the extent that they are authorised to provide the MiFID “top-up” services of investment advisory services and/or individual portfolio management services and bearing in mind that the relevant suitability requirements only apply in respect of such “top-up” services.

## Anti-Money Laundering and Counter-Terrorist Financing

Further changes to Ireland's AML framework are expected over the coming years following publication by the European Commission, in July 2021, of a set of four legislative proposals with the aim of strengthening the EU's AML and countering the financing of terrorism rules (**CFT**), including proposals for a single EU Rulebook for AML/CFT and a Sixth Money Laundering Directive.

During 2022, anticipated developments include:

- ▣ the finalisation of the European Banking Authority's (EBA) [draft guidelines on the role of AML/CFT compliance officers](#). The consultation period is now closed;
- ▣ the finalisation of the EBA's [draft guidelines on the use of Remote Customer Onboarding Solutions under the Fourth Money Laundering Directive](#). The consultation period closes on 10 March 2022; and
- ▣ the finalisation of the EBA's its [draft regulatory technical standards](#) (RTS) on a central database on AML/CFT in the EU. The central AML/CFT database which will contain information on material AML/CFT weaknesses in financial services providers identified by national competent authorities.

## EMIR

In addition to the developments outlined above ESMA issued a [consultation paper](#) on draft guidelines for derivatives reporting under EMIR in July 2021. The guidelines will apply in relation to the derivatives reporting obligation which apply to counterparties as well as to the trade repository obligations which apply to trade repositories. ESMA expects to be in a position to publish the final report on these Guidelines in early 2022.

## Senior Executive Accountability Regime

July 2021 saw the publication of the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 (**General Scheme**) by the Irish Department of Finance. The publication of the General Scheme was in response to proposals made by the Central Bank to establish an Individual Accountability Framework (**IAF**) in its report on "Behaviour and Culture of the Irish Retail Banks" in July 2018 to improve individual accountability in the financial services sector.

Under the General Scheme, the IAF framework will include the establishment of a "Senior Executive Accountability Regime" (**SEAR**) as well as the introduction of new enforceable conduct standards (or standards of behavior) expected of regulated entities, their senior executive functions and other staff, enhancements to the fitness and probity regime and a unified enforcement process which aims to break the existing "participation link" whereby the relevant regulated entity must be found to have committed a breach before individuals within it can be held to account.

Under the SEAR framework, regulated entities will be required to improve their internal processes by clarifying the roles of their senior executive functions. This will be achieved by the creation of individual statements of responsibility, together with a management responsibility map documenting the regulated firm's wider governance and

management arrangements. A legal duty of responsibility will be imposed on those performing senior executive functions to take reasonable steps to avoid the relevant regulated firm committing or continuing to commit a prescribed contravention in relation to the areas of the business for which they are individually responsible.

While the SEAR will initially be applied to a sub-set of regulated entities only (including credit institutions, insurance companies and certain (larger) investment firms), it is expected to be expanded at a later stage to cover other types of regulated entities. Furthermore, the conduct standards (which will include both common conduct standards applicable to all persons performing a “controlled function” and additional conduct standards for individuals in senior positions) and enhancements to the fitness and probity regime as detailed in the General Scheme are expected to apply to all regulated entities from the outset.

The Central Bank has indicated that once the bill has been published (which it hopes will be in the first half of 2022), it intends to publicly consult and engage with key stakeholders on the implementation of the Framework. Given the likely impact of the new IAF on all Irish regulated entities, management companies and their advisors are likely to be closely monitoring the publication of the related bill and its progress through the legislative process during the course of 2022.

In a related development, the Companies (Corporate Enforcement Authority) Act 2021, which was signed into law in December 2021, transforms the existing Office of the Director of Corporate Enforcement into a statutory agency called the Corporate Enforcement Authority which will have greater autonomy and enhanced resources to investigate and prosecute alleged breaches of company law (including legislation governing ICAVs), including fraudulent trading and dishonest dealings. The legislation is expected to be commenced early in 2022.

### **Developments in the Crypto Assets Sector**

2022 will also see further consideration of the European Commission’s proposed EU Markets in Crypto Assets Regulation which is intended to create uniform, EU-wide specific rules for crypto-assets and related activities and services. We may also see further clarity being provided by European regulatory authorities on the suitability of investment in crypto assets by UCITS funds and/or AIF funds<sup>36</sup>.

### **Conclusion**

We look forward to working with our clients on the wide range of topics outlined above during the course of 2022. If you have any questions arising from this briefing, please contact your usual contact in the Dillon Eustace Asset Management and Investment Funds Team.

**Dillon Eustace LLP**

**17 January 2022**

---

<sup>36</sup> The Central Bank has provided its view on investment in crypto assets by both a UCITS and a QIAIF in its recently published [Q&A on UCITS](#) and [Q&A on AIFMD](#) in which the Central Bank notes that it will continue to be informed by European regulatory discussions on the topic.



**Cillian Bredin**  
**Partner**

E: [Cillian.Bredin@dilloneustace.ie](mailto:Cillian.Bredin@dilloneustace.ie)  
DD: + 353 (0)1 673 1889



**Áine McCarthy**  
**Professional Support Lawyer**

E: [Aine.McCarthy@dilloneustace.ie](mailto:Aine.McCarthy@dilloneustace.ie)  
DD:+ 353 (0)1 673 1861

[www.dilloneustace.com](http://www.dilloneustace.com)

**DILLON**  **EUSTACE**

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022

**Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022

**New York**

Tower 49, 12 East 49<sup>th</sup> Street, New York, NY10017, U.S.A. Tel: +1 646 770 6080

**Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885

**DISCLAIMER**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace LLP.

Copyright Notice:© 2022 Dillon Eustace LLP. All rights reserved.