

Asset Management & Investment Funds Ireland

Asset management is always an important subject and never more so than in times of economic uncertainty, such as the world has been experiencing for the last four years. To find out about the issues surrounding asset management and investment funds in Ireland at the moment, *Lawyer Monthly* speaks to Donnacha O'Connor from Dublin-based law firm, Dillon Eustace. This firm specialises in financial services, banking, capital markets, corporate, dispute resolution, real estate, insurance and taxation. As well as Dublin, Dillon Eustace also has offices in New York, Tokyo and Hong Kong to assist its local clients and develop new relationships, as well as a recently opened Cayman Islands office.



Donnacha O'Connor

What are the most common types of cases you deal with?

Dillon Eustace has one of the largest financial services legal practices in Ireland, serving clients across a whole range of

activities, including asset management, investment funds, investment services and insurance and pensions. The firm's other practice areas cover a variety of work, and also support the financial services practice. For example, our dispute resolution team advises in the areas of securities litigation, insolvency and recovery and regulatory enforcement involving investment funds and other financial product providers.

What are the main challenges you face on a regular basis and how do you overcome these challenges?

Keeping up with the pace of change in financial law and regulation, particularly in the past four years, has been a challenge for every law firm. There is no substitute for having enough specialised staff working in the areas where change is occurring. Far more resources are needed now to manage knowledge within a firm, and also to work with and lobby government and industry bodies and regulators in relation to changes

to the law. Clients have to be kept up to speed with what is going on and this all has to be done in an individual client focused and timely manner.

What are the current trends within your country's investment fund market?

Irish domiciled investment funds now account for more than 13% of all investment funds in the euro area and this figure has been growing steadily since the early days of the industry. This disproportionately large share of the market can be put down to a number of factors, including that Ireland is mostly an exporting fund domicile which has strong political and cultural links to a number of the world's largest financial centres, it is a common law, English speaking, EU and euro area member state and the laws and regulatory regime are designed to facilitate the development of the industry as well as to ensure that the sector is well regulated.

Perhaps most importantly, Ireland's funds servicing industry had a first mover advantage over competing European centres in the 1980s. The government used a package of financial incentives to encourage private sector investment in high-quality infrastructure in Dublin's docklands area and assigned a special 10% corporation tax rate to companies operating in this and other areas of international financial services to encourage international firms to establish in Ireland. Irish domiciled funds were made exempt from Irish tax on their income and gains.

The funds services industry is now very well established: the fund servicing expertise and the depth of the fund servicing market here are well recognised. For example, over 40% of the world's hedge funds are serviced out of Ireland. By fund number and asset size there is a split of approximately 80/20 between UCITS and non-UCITS that are domiciled in Ireland. Ireland's traditional strengths in money market funds, traditional stock and bond funds, exchange traded funds and so-called alternative funds, including hedge funds, make up a significant share of the 2 trillion euro of net assets in funds domiciled and/or serviced out of Ireland.

What are the main issues to be wary of in prospectus and contractual documentation negotiation?

Market forces have shifted considerably in the past number of years and when it comes to the prospectus, investors and regulators are now demanding more transparency. Investors are driving structural change also, particularly as regards liquidity. There is particular pressure to eliminate what used to be very commonplace defensive measures for certain funds such as gates, suspension and side pockets. It is getting increasingly difficult to strike a balance between giving the investor the level of disclosure it seeks and being too prescriptive and creating unacceptable risk for the manager, and also between defining realistic liquidity terms for the fund based on its strategy and portfolio and giving investors the liquidity they are demanding.

Service providers are more conscious of their exposure to liability and are looking to define the limitations of their services more explicitly.

The areas where funds have always needed to be careful were in the definition of services and the liability and indemnity provisions. Greater focus is now being placed on service level agreements and the areas of portfolio valuation, safe-keeping of assets, tax services and compliance.

Keeping up with the pace of change in financial law and regulation, particularly in the past four years, has been a challenge for every law firm.

What, if any, relevant legislative progressions have there been recently?

Very significant and voluminous changes in European financial law are under way at the moment and the Irish government and national regulator are busy implementing those or preparing for implementation. In the funds sector, the two most significant pieces of legislation which apply directly to funds are the re-cast 2009 UCITS directive which was implemented into Irish law in July of last year and the directive on alternative investment fund managers, which was adopted by the European council and parliament last summer and is due for implementation into national member state law by July 2013. The latter law requires a re-statement of domestic non-UCITS funds law and regulation and this process is well underway in Ireland.

In addition, new laws are being introduced in areas such as market clearing and settlement which will impact on all funds. Existing laws which fundamentally affect banks and investment firms such as the capital requirements directive and the markets in financial instruments directive are being updated substantially.

Ireland is shortly to introduce a new investment fund product which will be similar to the UK's open ended investment company and its principal purpose will be to qualify as a tax transparent vehicle for U.S.

federal income tax purposes. currently, Irish corporate funds are treated as tax opaque for us purposes and unit trusts and other non-corporate vehicles are used where us tax transparency is required.

What legislative changes do you feel there is a need for and what would you like to see?

There should be more focus in financial services law on facilitating savings by investors and on the impact which proposed regulatory changes may have on investor behaviour. These should be material elements of the law making process and they do not appear to be. A more holistic approach to law making is necessary: it is clear that the absence of a single European rule book and a lack of harmonisation in matters relating to taxation facilitates arbitrage or avoidance. Like most people in the industry, I am concerned about the impact and effectiveness of the changes to some of the laws being introduced at the moment, particularly the directive on alternative investment fund managers, and that they may make Europe's funds industry uncompetitive. **LM**

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