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Protected Disclosures (Amendment) Act 2022: Implications for Irish Financial Service Providers and Irish Funds

Background

Earlier this month, a commencement order for the Protected Disclosures (Amendment) Act 2022 (Act), which implements the EU Whistleblowing Directive and amends the original Protected Disclosures Act 2014, was signed into law, confirming that the Act will commence on 1 January 2023 (Commencement Date).

Whilst there is a delayed application date of 17 December 2023 for most categories of employers, Irish financial service providers (including Irish UCITS management companies, Irish AIFMs and Irish MiFID firms) as well as Irish domiciled corporate funds (In-Scope Firms) must comply with the Act from the Commencement Date, regardless of the number of “workers” they have.

In this briefing, we outline some of the key provisions of the Act and steps which should be taken by In-Scope Firms before the Commencement Date to ensure compliance with the Act.

New Developments under the Act

The Act imposes a number of obligations on In-Scope Firms, including the following:

- the establishment, maintenance and operation of a secure and confidential internal reporting channel for workers who wish to make a protected disclosure, whether in writing or orally or both;

- the designation of an impartial and competent person who may be internal or external to the relevant In-Scope Firm. Their responsibilities under the Act include maintaining communication with any person who makes a protected disclosure, carrying out an appropriate assessment of the alleged wrongdoing, taking appropriate action to address the relevant wrongdoing where there is prima facie evidence that

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Key Points to Note:

- The Protected Disclosures (Amendment) Act 2022 applies to In-Scope Firms from 1 January 2023

- Irish UCITS management companies, AIFMs, MiFID firms and other Irish financial service providers, as well as Irish domiciled corporate funds, regardless of the number of workers they have, will be expected to comply with the Act from that date.
a relevant wrongdoing has occurred and providing feedback to the person who made the protected disclosure within the prescribed timeframes set down in the Act;

and;

- an obligation to provide workers with information on both the internal and external protected disclosure reporting process. Under the Act, the external reporting procedures include not only the procedures for making a report to the relevant prescribed person but also to the newly established Office of the Protected Disclosures Commissioner where relevant.

A number of other key changes introduced under the Act broaden the scope of the obligations already imposed on In-Scope Firms under existing legislation. Of particular relevance are the following:

- The definition of “worker” under the Act now includes, amongst others, members of the board of directors (including non-executive members) and shareholders of the relevant In-Scope Firm;

- The Act extends the scope of “relevant wrongdoing” to include any breaches of financial services legislation (including not only the UCITS, AIFMD and MiFID Directives but also other applicable EU financial services legislation such as the PRIIPS Regulation, the Market Abuse Regulation and the Benchmarks Regulation) as well as any breaches of the GDPR and the Money Laundering and Counter Terrorist Financing Directive, amongst others; and

- The Act expands protection for workers who make protected disclosures by widening the scope of “penalisation” to include without limitation withholding a promotion from a worker, ostracism, negative performance reviews or employment references, failure to make permanent a temporary employment contract, harming a worker’s reputation or blacklisting within an industry or sector.

**Offences under the Act**

Failure on the part of an In-Scope Firm to maintain and operate appropriate internal reporting channels and procedures constitutes an offence under the Act. Where it is proved that this has been committed with the consent or connivance of, or is attributable to, any neglect on the part of a director, manager, secretary or other officer of the In-Scope Firm, that person, as well as the In-Scope Firm commits an offence and will be liable to be prosecuted against and punished in accordance with the penalties outlined in the Act.

**Key Steps for In-Scope Firms**

In advance of the Commencement Date, In-Scope Firms should take the following steps to ensure compliance with the Act:

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1 In the case of Irish UCITS management companies, AIFMs and MiFID firms, the prescribed person in most cases is likely to be the Central Bank of Ireland
Ensure that existing whistleblowing policies and procedures are reviewed and updated as necessary to implement a suitable internal reporting channel to receive protected disclosures in a secure and confidential manner in compliance with the Act;

effect that information on the procedures to be followed to make an internal or external protected disclosure is clear and easily accessible to workers; and

identify an impartial person to perform the role of a “designated person” in accordance with the provisions of the Act and ensure that such person is appropriately trained.

We are currently working with In-Scope Firms to update their existing whistleblowing policies and procedures to comply with the Act. If you have any questions relating to this briefing, please get in touch with your usual Dillon Eustace contact.

Dillon Eustace LLP
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Richard Looby
D: + 353 1 673 1860
E: Richard.Looby@dilloneustace.ie