

Investment Funds - Horizon Scanning 2018

We have outlined below anticipated key dates for legal and regulatory developments and deadlines impacting the asset management and investment funds industry in 2018.



January

Benchmark Regulation

The regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (“**Benchmark Regulation**”) sets out a European Union (“**EU**”) regulatory framework for benchmarks. The Benchmark Regulation is intended to restore investor and consumer confidence in the accuracy, robustness and integrity of indices used as benchmarks and the benchmark setting process.

Supervised entities (including UCITS, UCITS management companies and alternative investment fund managers (“**AIFMs**”)) are not permitted to use unregulated benchmarks as a benchmark in the EU from **1 January 2018** (subject to transitional provisions).

Written contingency arrangements setting out the steps to be taken in the event that a benchmark ceases to exist or materially changes must be put in place by **1 January 2018** and must be provided to the Central Bank on request. The contingency arrangements should be reflected in contractual relationships with clients.

All new UCITS authorised on or after 1 January 2018 must include information in the prospectus as to whether the index provider complies with the Benchmark Regulation. UCITS authorised before 1 January 2018 must incorporate such disclosure the next time they are updating their prospectuses after 1 January 2018 and in any event no later than **1 January 2019**.

PRIIPs

The EU regulation on key information documents for packaged retail and insurance-based investment products (“**PRIIPs Regulation**”) takes effect on **1 January 2018**. The PRIIPs Regulation requires a manufacturer or distributor of a fund to draw up and make available a pre-contractual disclosure document – a key information document or “**KID**” – before making a fund available to retail investors in the European Economic Area (“**EEA**”).

Any Irish retail investor alternative investment fund (“**RIAIF**”), professional investor fund (“**PIF**”) or qualifying investor alternative investment fund (“**QIAIF**”) which is made available to retail investors within the EEA after 1 January 2018 must prepare a KID and publish it on its website.

UCITS may continue to provide the key investor information document (“**KIID**”) prescribed by the UCITS Directive until at least 31 December 2019, when the application of the PRIIPs Regulation requirements to UCITS will be reviewed.

	MiFID II / MiFIR	The revised Markets in Financial Instruments Directive (“ MiFID II ”) and Markets in Financial Instruments Regulation (“ MiFIR ”) apply from 3 January 2018 . The new rules do not apply directly to UCITS and alternative investment funds (“ AIFs ”) but may trigger changes to fund documentation (eg, prospectus disclosures, investment management agreements, distribution agreements) to ensure that MiFID authorised service providers to UCITS and AIFs comply with the new requirements.
	EMIR	<p>The regulation on over the counter (“OTC”) derivatives, central counterparties (“CCPs”) and trade repositories (known as the European Markets Infrastructure Regulation or “EMIR”) imposes obligations on EU derivatives markets participants, including margin requirements on all OTC derivative contracts that are not cleared by a CCP. The clearing obligation introduced by EMIR and the risk mitigation requirements for uncleared derivative transactions, including the exchange of variation margin, have been introduced on a phased basis, with most derivative users being required to exchange variation margin since 1 March 2017.</p> <p>The requirement to exchange mandatory variation margin for physically settled FX forwards, however, applies from 3 January 2018. Proposed amendments to the regulatory technical standards imposing this requirement were published by the European Supervisory Authorities (“ESAs”) on 18 December 2017 and would limit the scope of this requirement to transactions between credit institutions and certain investment firms.</p> <p>On 19 December 2017, the Central Bank of Ireland (“Central Bank”) confirmed that, in accordance with the recommendation from the ESAs and pending the outcome from their review of the regulatory technical standards, the Central Bank will apply its risk-based supervisory powers in the day-to-day enforcement of applicable legislation in a proportionate manner.</p>
February	UCITS	UCITS are required to update their KIIDs on an annual basis for each standalone fund / sub-fund within 35 business days of the end of each calendar year. The annual update of KIID must be filed no later than 19 February 2018 (where required). Where necessary, any update to the KIID filed with the Central Bank must be translated and filed in any other host jurisdictions where the UCITS is registered to market its shares and uploaded on the UCITS’ website.
	Fitness and Probity	Regulated financial service providers (“ RFSPs ”), including management companies, AIFMs, and self-managed UCITS / internally-managed AIFs, must complete an Annual Pre-Approval Controlled Function Confirmation Return to the Central Bank via the Online Reporting System. RFSPs must obtain an annual certification from persons performing pre-approval controlled functions (“ PCFs ”) and controlled functions (“ CFs ”) that they are aware of the Fitness and Probity Standards, they agree to comply with those standards and will notify the fund board if they no longer comply. The due date for the Annual PCF Confirmation Return has not yet been published on the Central Bank website; the 2017 filing deadline was 28 February 2017.
March	EuVECAs and EuSEFs	The regulation on European venture capital funds (“ EuVECA Regulation ”) and the regulation on social entrepreneurship funds (“ EuSEF Regulation ”) were reviewed by the European Commission as part of its project to build a capital markets union (“ CMU ”). The regulation amending the EuVECA Regulation and the EuSEFs Regulation (the “ Amending Regulation ”) was published in the Official Journal of the EU (“ OJ ”) on 10 November 2017. The Amending Regulation widens the range of managers eligible to set up and manage EuVECAs and

		<p>EuSEFs, broadens the range of firms in which EuVECAs can invest and extends the definition of enterprises in which EuSEFs can invest to include “services and goods generating social return”.</p> <p>The Amending Regulation applies from 1 March 2018.</p>
	AIFs / UCITS	<p>As part of the European Commission's CMU project, the European Commission consulted on the cross-border distribution of investment funds in June 2016, and followed up in June 2017 with an inception impact assessment (or roadmap) aimed at improving the functioning of the single market for EU investment funds by reducing national barriers to cross-border distribution of funds.</p> <p>The European Commission is expected to publish a legislative initiative on reducing barriers to cross-border distribution of AIFs and UCITS in March 2018.</p>
May	General Data Protection Regulation	<p>The General Data Protection Regulation (“GDPR”) enters into force on 25 May 2018.</p> <p>Investment fund companies, ICAVs, management companies, AIFMs, distributors, fund administrators and depositaries will each need to consider the extent to which they control and / or process personal data, whether relating to investors (and whether individuals, or individual business contacts for corporate, nominee or service provider entities), or their respective officers and employees, and to ensure that in each case they can demonstrate compliance with the relevant requirements of GDPR.</p>
July	Corporate Governance (CP86)	<p>UCITS management companies and AIFMs of funds established prior to 30 June 2017 and self-managed UCITS and internally managed AIFs established prior to that date must comply in full with the Central Bank Guidance for Fund Management Companies 2016 (CP86) by 1 July 2018.</p> <p>The Central Bank guidance sets out requirements relating to the streamlining of managerial functions to six managerial functions, the performance of the organisational effectiveness role, effective supervision and the retrievability of records, as well as guidance on delegate oversight and directors' time commitments with which all funds must already be compliant.</p>
	Money Market Funds	<p>The Money Market Funds Regulation (“MMFR”) enters into force on 21 July 2018. The MMFR introduces new requirements for MMFs, whether they are UCITS or AIFs, relating to portfolio composition, valuation of assets, diversification, liquidity management and credit quality of investment instruments. Existing MMFs will have until 21 January 2019 to demonstrate compliance with the MMFR.</p>
November	AIFs / UCITS Accounts	<p>The Companies (Accounting) Act 2017 obliges UCITS investment companies and AIF investment companies to file annual accounts for financial years commencing 1 January 2017 with the Companies Registration Office (“CRO”) within 11 months of the relevant financial year end. The first such accounts will be filed by 30 November 2018.</p>

**During
2018**

Irish Partnership Law Reform	<p>In July 2017, the Irish Government approved the legal drafting of the Investment Limited Partnership (Amendment) Bill 2017, which is expect to be progressed in 2018. The purpose of the bill is to amend the Investment Limited Partnerships Act 1994 governing regulated limited partnership structures (“LPs”). The proposed amendments aim to bring regulated LPs into line with other Irish fund structures and international standards for limited partnership funds, including the standards applicable under the AIFMD. This will enhance Ireland’s offering for global private equity, venture capital, infrastructure, loan origination and other real asset investment funds.</p>
Anti-Money Laundering	<p>The Fourth Money Laundering Directive (“MLD4”) had a transposition deadline of 26 June 2017. The Irish transposing legislation has yet to be published but is expected to be published in the first half of 2018.</p> <p>To pre-empt the introduction of a central register of beneficial ownership, as required under MLD4, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 were introduced in Ireland in November 2016 and require Irish companies to gather information on individuals who are their underlying beneficial owners. The Irish government announced in late November 2017 that the central register of beneficial ownership, to be maintained by the CRO, would be introduced during Q1 2018. The CRO has indicated that there will be an extended timeframe within which entities can file information without being in breach of their legal obligations.</p> <p>The European Parliament and European Council are expected to formally adopt the proposed directive amending the Fourth Money Laundering Directive (“MLD5”) during 2018. Among other matters, MLD5 provides for public access to the central register of beneficial ownership.</p>
AIFMD	<p>The Alternative Investment Fund Managers Directive (“AIFMD”) requires that the European Commission review the application and scope of the directive by 22 July 2017. This review has yet to be completed but may be progressed during 2018.</p>
Reform of European Financial Supervision	<p>In September 2017, the European Commission published a proposed regulation reforming the system of European financial supervision by extending the powers of the European Supervisory Authorities (“ESAs”). Under the proposals, the ESAs would set EU-wide supervisory priorities, check the consistency of work programmes of individual supervisory authorities with EU priorities and review their implementation. The ESAs would have an enhanced role in monitoring national authorities’ practices in allowing market players – such as banks, fund managers and investment firms – to delegate and outsource business functions to non-EU countries. There would also be extended direct capital markets supervision by the European Securities and Markets Authority (“ESMA”), including the authorisation and supervision of EuVECAs, EuSEFs and European Long Term Investment Funds. ESMA would have product intervention powers for UCITS and AIFs. The proposals are expected to be progressed during the course of 2018.</p>
Exchange Traded Funds	<p>Increased investor interest in the rapidly growing exchange traded fund (“ETF”) sector has been matched by increased regulatory scrutiny of these funds. The International Organisation of Securities Commissions (“IOSCO”) has stated that it will launch a review of the ETF industry in early 2018 with a view to making new recommendations that will strengthen the oversight of ETFs. Taking account of Ireland’s position as the principal domicile for European ETFs, the Central Bank has sought to lead the international exchange of views relating to</p>

the review of ETFs, publishing a discussion paper in May 2017 and hosting a conference attended by senior international regulators in Dublin in November 2017. The Central Bank will work in conjunction with international regulatory bodies in respect of ETFs during 2018 and is expected to issue further publications in this area during the year.

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