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**Link & learn**  
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# Speakers



**Derina Bannon**

Manager

Legal and Regulatory  
Deloitte Ireland

E: [dbannon@deloitte.ie](mailto:dbannon@deloitte.ie)

T: +353 1 417 2637



**Livia Faria**

Assistant Manager –  
Audit & Assurance  
Technical

Deloitte Ireland

E: [lfaria@deloitte.ie](mailto:lfaria@deloitte.ie)

T: +353 1 417 3081

## Agenda

- 01 Introduction
- 02 ESMA Opinion to support supervisory convergence
- 03 Companies (Accounting) Act 2017
- 04 Questions

# **Brexit & Supervisory Convergence**

Derina Bannon

# Brexit

## Impact on asset managers

The UK's departure from the EU could have a significant impact on how asset managers operate within the single market.

EU's laws and regulations UCITS, MiFID and AIFMD currently allow UK regulated managers to "passport" into the EU.

UK-based asset managers may currently rely on these "passporting rights" in order to:

- Distribute products in the EU, for example through EU branches or representative offices; and
- Manage EU-domiciled funds, or segregated portfolios, directly from the UK.

The impact of Brexit on these arrangements is currently unclear, and will affect different asset managers, different service providers in different ways.

It will depend in particular on the types of product which are managed and the EU directives which are being relied upon.

**However, it is likely that, post-Brexit, it may not be possible for UK entities to undertake some EU distribution and portfolio management activity. This activity may therefore need to be moved to entities established in the EU.**

**The withdrawal will be on the date of entry into force of a withdrawal agreement or 2 years after the notification on 30 March 2019 ( can be extended )**

# ESMA General Opinion on Supervisory Approach to Relocations from the UK

The European Securities and Markets Authority (ESMA) has published an Opinion\* setting out general principles for entities that will be seeking to relocate entities from the United Kingdom.

- ✓ It is practical tool to support supervisory convergence to safeguard investors, the functioning of the financial markets and financial stability so that there is not supervisory arbitrage ( a race to the bottom)as a result of the increased authorisations sought to relocate in the 27 EU member states.
- ✓ The opinion is addressed to national competent authorities (NCAs) of the 27 Member States that will remain in the EU (EU27 )
- ✓ The Opinion assumes a **"hard Brexit"** which would mean that the UK will become a third country.

Opinion covers **authorisation, supervision and enforcement** related to the relocation of entities, activities and functions from the United Kingdom. New authorisations must be granted with full EU law compliance and in a manner consistent across the EU27. **A wide range of complex legal, regulatory and Tax issues to consider.**

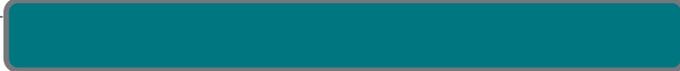
[\\*ESMA issues principals on supervisory approach to relocations from the UK](https://www.esma.europa.eu/press-news/esma-news/esma-issues-principles-supervisory-approach-relocations-uk)

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# ESMA



ESMA will establish the Supervisory Coordination Network to allow NCAs to report and discuss cases of relocating UK market participants and the aim is to help to promote consistent decisions by NCAs



ESMA is also prepared to take further measures “to support supervisory convergence, including issuing Q&As, providing additional opinions to NCAs, and conducting peer reviews” \*.

*\* 31 May 2017 ESMA42-110-433*

# ESMA

## The Opinion Sets out 9 Principals

1

No automatic recognition of existing authorisations;

2

Authorisations granted by EU27 NCAs should be rigorous and efficient;

3

NCAs should be able to verify the objective reasons for relocation;

4

Special attention should be granted to avoid letter-box entities in the EU27;

5

Outsourcing and delegation to third countries is only possible under strict conditions;

6

NCAs should ensure that substance requirements are met;

7

NCAs should ensure sound governance of EU entities;

8

NCAs must be in a position to effectively supervise and enforce Union law;

9

Coordination to ensure effective monitoring by ESMA.

The Opinion\* flagged that ESMA would develop further "sector-specific" opinions concerning asset managers, investment firms and secondary markets.

# ESMA

## Investment Management Opinion\* is part of the package of ESMA opinions on BREXIT on relocations from the UK to the EU27

(ESMA) has published three sector specific opinions in the areas of [investment firms](#), [investment management](#) and [secondary markets](#) from in order to foster consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and supervision from the UK.

### **RELOCATING FROM THE UK**

- An entity seeking authorization for the first time in the EU 27
- An entity restructuring as a result of a transfer of activities / functions from a UK entity – what needs to be considered nature, scale and complexity
- Builds on the Central Bank of Ireland ( CP86) Fund Management Company Guidance

*[\\*Opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union ESMA35-45-344](#)*

# ESMA

## Investment Management Opinion

The Opinion\* sets out principles and expectations to address regulatory and supervisory risks based on the UCITS Directive and AIFMD :



*\* Opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union ESMA35-45-344*

# Investment Management Opinion

## Authorisation, Governance and Internal Control

### Nature

### Scale

### Complexity

#### Authorisation

A re-locating entity must undergo a full authorisation process under UCITS or AIFMD – detailed programme of operations

NO transitional provisions.

NCA must look at the group structure and location of shareholders to make sure that they can effectively supervise

Why is the EU27 being chosen It must not be regulatory arbitrage

#### Governance and Internal Control

Distribution policy and marketing strategy

Policies and Procedures

Size of the Manco

Number of Sub-Funds

Number of Share Classes

Type of investment strategies and Type of investors

Type of functions performed internally or delegated

No reporting lines that would contradict controls

Directors time commitments and Directors decide the conduct of the entity

Platforms

Type and range of asset classes

Geography of Investments

Leverage

# Investment Management Opinion Delegation

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## Delegation

PROPER SCRUTINY BY  
THE NCA

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Impact of operations in  
other jurisdictions on  
ability to supervise and  
post authorisation

Access by the NCA  
Co-operation between  
NCS

Detailed evidenced  
backed explanation

Select and  
challenge  
delegates

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Cooperation between  
NCAs  
Sufficient  
Human Capital and  
technical resources

Robust internal control  
function to enable  
effective oversight of all  
delegated activities

Objective  
justification and  
special attention to  
non-EU delegates ( and if EU  
investments )

Case by Case  
analysis of  
delegation

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# Investment Management Opinion Delegation

**Contractual arrangements**

**Delegation of IM functions can not substantially outweigh those retained by Manco**

**Objectively justified**

**Substance** Relocating Manco should transfer a sufficient amount of portfolio management and/or risk management functions to the new EU member **so that the former EU member state is not carrying out the substance**

**Timely access to all records**

**Due Diligence**  
continuous monitoring/review/ on site visits/ contingency planning / written evidence

**Co-operation between EU NCA and Non-EU Regulators**

**Should not impair effective regulation**

## ESMA

- Additional scrutiny where the ManCO has less than 3 full – time equivalent IM management functions and / or monitoring of delegates. An FTE is a dedicated resource of the ManCo.
- Non-EU Branches of ManCos must be objectively justified and not result in material functions / services being provided by Non-EU Branches.

# Investment Management Opinion

## NCA Effective Supervision

Impact of group structure

Location of established entities

Authorisation for a specific purpose in a specific jurisdiction

Delegation must not obstruct the NCA from being able to obtain or access information

Cooperation between NCAs

Cooperation between non-EU NCA and EU NCA

# **Companies (Accounting) Act 2017**

Livia Faria

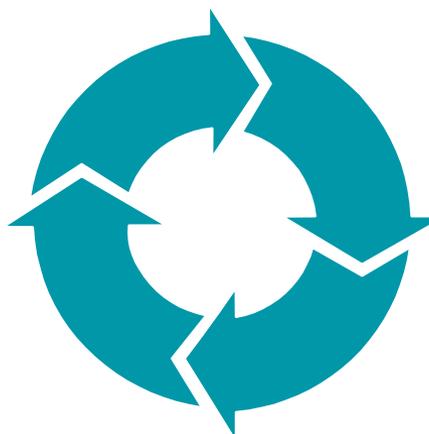
# Companies (Accounting) Act 2017

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The Companies Accounting Act (2017) commenced on the **9<sup>th</sup> June 2017** bringing the most significant changes to Irish Company law since The Companies Act 2014 (the “2014 Act”)

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**Transposition of EU directive:** Ireland catching up now as was overdue since July 2015 and was already transposed in April 2015 into UK law



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Applicable to financial accounting periods beginning on or after **1 January 2017**

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Early adoption available for accounting periods commencing on or after 1 January 2015

# Investment Management Filing and Reporting Amendments

## Investment Companies



AIF investment companies and UCITS PLCs will now be required to file financial statements, statutory auditors' report and directors' reports with the Company Registration Office (the "CRO") not later than 11 months after the end of the company's financial year which commenced on or after the 1st of January 2017.

## Financial Reporting and Auditors Report Pack

Section 100 amends the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

An Irish domiciled UCITS PLCs must ensure that the statutory auditors' report is in compliance with the requirements of Section 336 of the Companies Act 2014 and the Statutory Audit Directive 2016.

Section 101 amends the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I.No. 257 of 2013)

The statutory auditor's report of an Irish domiciled or EU domiciled Alternative Investment Fund ("AIF") must comply with (as applicable) (a) the requirements of Section 336 of the Companies Act 2014 if the fund is an Irish domiciled AIF and (b) the requirements of the Statutory Audit Directive 2016 of Ireland or of the home Member State of the EU AIF.

# Companies (Accounting) Act 2017

## Changes in legislation which impact all companies

### **Section 291/292 of The Companies Act 2014 (as amended) requires the following to be stated on the face of the financial statements:**

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- ✓ The **name** and **legal form** of the company;
- ✓ The **place of registration** of the company and the **number under which it is registered**;
- ✓ The **address of its registered office**;
- ✓ Where the company is being wound up, **the information required by section 595** - generally a statement that the company is being wound up.

Non-compliance with Section 291/292 is a category 2 offence.

# Companies (Accounting) Act 2017

## Changes in legislation which impact all companies (continued)

### Directors' Remuneration Disclosures

#### Payments to third parties for services of directors

UCITS PLCS and AIF investment companies will have to assess if any of their payments to an administrator, investment manager or other third party service provider were payments for services of directors.

**Section 305 (A) of the Act introduces a new section to The Companies Act 2014.** It is now a requirement in the directors' remuneration disclosure in the financial statements to include any payments to or receivables by third parties for services of directors of the company or any of its subsidiaries or otherwise in connection with the management of the company (or its subsidiaries).

Third parties do not include the director or a person connected with the director, a body corporate controlled by the director or the company itself or any of its subsidiaries.

# Companies (Accounting) Act 2017

## Changes in other legislation which will impact Investment Management Entities

### **Electronic Filing S.I. No. 458 of 2016**

Companies are required to file accounts electronically from the 1 June 2017. Paper documents are no longer accepted.

### **Beneficial Ownership S.I. 560 of 2016**

All legal entities incorporated in Ireland are required to have a central register of ultimate beneficial owners (natural persons) since 15 November 2016. Listed companies – include details of senior management if no shareholder holds >25%. Useful for audit purposes when considering related party disclosures.

# Companies (Accounting) Act 2017

## Beneficial ownership register – information to be held by companies

The requirement for corporate and legal entities ("companies") to hold their own beneficial ownership register was transposed into Irish law by **Statutory Instrument ("SI") No 560 of 2016**.

### The following is a summary of the information that companies are required to hold under Section 4 of the SI :

1. the name, date of birth, nationality and residential addresses of each beneficial owner of it (the beneficial owner must be a natural person);
2. a statement of the nature and extent of the interest held by each such beneficial owner;
3. the date on which each natural person was entered into the register as a beneficial owner of it;
4. the date on which each natural person who has ceased to be a beneficial owner of it ceased to be such an owner;
5. if, having exhausted all possible means and provided there are no grounds for suspicion by the company, no natural persons are identified, or there is any doubt that the persons identified are the beneficial owners, there shall be entered in the register the names of the natural person(s) who hold the position of senior managing official(s) of the company (including their date of birth, nationality and residential addresses). In this case, a company shall keep records of the actions taken in order to identify the beneficial ownership of it.

**Regime to file this information with CRO delayed but expected later this year – not clear if information is to be publicly available**

# Companies (Accounting) Act 2017

## Changes in other legislation

### **Regulation 61 of S.I. 312 of 2016**

PIEs to disclose date of appointment of auditor in directors' reports for periods commencing on or after 17 June 2016

### **EU Directive Corporate Governance**

Directive 2014/95 requires "large" PIEs i.e. with more than 500 employees to make disclosures in their directors' report in relation to environmental and social matters and also diversity on the board of directors. Transposition into Irish law overdue – applies to accounting periods commencing on or after 1 January 2017. [In Ireland, Regulations to transpose this Directive are expected to be published now that the enactment of the Companies \(Accounting\) Bill has been completed.](#)

# Questions?



# Next Link'n'Learn

Date: September 7<sup>th</sup> 2017

Topic: Cyber Risk



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