

KB Associates Client Update

Central Bank of Ireland's Fitness and Probity Regime – Applicability to Investment Funds

Background

- On 1 September 2011, the Central Bank of Ireland ('Central Bank') introduced a revised Fitness and Probity Regime (the 'Regime') for all Central Bank regulated financial services providers including investment funds
- The Regime applies to all persons occupying Pre-approval Controlled Functions ('PCFs') or Controlled Functions ('CFs')
- A function is considered a PCF if the person fulfilling said function may exercise a 'significant influence'. Fund directors are considered PCFs
- The Central Bank's definition of CFs is very broad and includes a function likely to enable the exercise of a significant influence on the conduct of the affairs of a fund

Implications of Regime

- A PCF role cannot be offered by a fund without Central Bank approval
- It will be an offence for a fund to permit a person to perform a PCF or a CF unless the fund is satisfied on reasonable grounds that the person complies with the Fitness and Probity standards and the person has agreed to abide by the standards. This will impose on-going due diligence requirements with respect to PCFs and CFs
- A PCF/CF should:
 - Be competent and capable
 - Be honest, ethical and act with integrity
 - Be financially sound

Expected Due Diligence

Funds are required to carry out due diligence on all PCFs and CFs. The below list identifies the areas that may be considered as part of this due diligence process, a record of which should be kept on file to allow for inspection by the Central Bank:

Fitness

- References from former employers and record of previous experience
- Evidence of professional qualifications (if applicable)
- List of directorships
- Consideration of the current draft of the Irish Funds Industry Association's ('IFIA') Corporate Governance Code
- Written confirmation from the PCF/CF confirming his/her ability to discharge the function

Probity

- Criminal record and prohibitions
- Restrictions on or suspension from the right to carry out any trade
- Complaints made to regulatory authorities
- Disciplinary proceedings and dismissals
- Directorships of insolvent companies and disqualification from acting as a director

Financial Soundness

- Bankruptcy and unsatisfied judgements

Key Time Line

- **1 December 2011** - the Regime will apply to all categories of PCFs
- **31 December 2011** - funds are required to provide the Central Bank with a list of all PCFs and confirmation in writing as to their fitness and probity and that they have obtained written confirmation from each PCF that he/she will abide by the standards
- **1 March 2012** - all new appointments to CFs will be subject to the Regime
- **1 December 2012** - the Regime will apply to all CFs (existing and new)

On-going Consultation

- There is continuing dialogue between the IFIA and the Central Bank on the Fitness and Probity Regime. Some points being considered are:
 - The suggestion of Fitness and Probity guidance specific to the funds industry
 - The suggestion that a Self-Managed Investment Company is a product rather than a Regulated Service Provider and therefore exempt from the Regime (Management Companies would still be within the scope of the Regime)
- KB Associates will continue to monitor the requirements and will notify you of any developments

If you have any questions please contact Frank Connolly (Ph: +353 1 667 1987; E-mail: frank.connolly@kbassociates.ie) or your usual KB Associates contact.

KB Associates

28 October 2011