BONUS CAP WILL APPLY TO UK MIFID FIRMS MOVING TO IRELAND

Financial services could be in for quite a shake-up after Brexit but Ireland's position is clear on the regulation of MiFID firms, wherever they come from

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Political events following the Brexit referendum in the UK last year have given rise to much reflection in Ireland on the consequences for the Irish economy, which may be negative in a number of respects. In straight economic terms a hard Brexit will tilt the balance of trade between the UK and Ireland strongly in favour of the UK, Ireland's largest trading partner, adversely affecting jobs in Ireland.

The withdrawal of the UK from the EU will also leave Ireland weaker within the EU, without the benefits of a fellow member nation with the same language, and similar culture and laws.

While much has been said about the implications of Brexit for the UK, almost nothing has been said yet about the likely make-up of the EU after Brexit, and Ireland's continuing membership and influence. It is likely that the withdrawal of the UK will adversely affect Ireland's standing and influence as it will be the only remaining common law member state, and a small one at that. It is also likely that the EU will become more integrated along the lines of the euro area, and this has led some commentators to conclude that the euro is stronger than the EU.

Financial services in the EU

One of the few upsides of Brexit for economic activity in Ireland is the potential for the relocation of UK financial institutions to Ireland (in competition with other EU jurisdictions) to maintain freedom of services. This will apply to banking, insurance, and MiFID firms.

The working assumption underpinning this view is that the UK will continue to be recognised by the EU as an equivalent third-country supervisory regime to the EU, such that arrangements are put in place at an EU level to harmonise the supervisory relationship between the EU and the UK in banking, insurance and MiFID activities, regardless of whether Brexit is 'hard' or 'soft'.

UK MiFID firms

Based on the range and types of enquiries from the UK we have reviewed in the past 12 months, the indications are that Ireland will be well-placed to attract UK MiFID firms including investment managers, broker-dealers and market infrastructure firms.

The bonus cap

A question that has been repeatedly raised recently (and one over which there has been quite a degree of confusion) is whether the CRD IV bonus cap will apply to MiFID firms operating in Ireland. The bonus cap limits variable remuneration to 100 per cent of fixed remuneration, subject to an upper limit of 200 per cent, with shareholder approval.

The Central Bank of Ireland (CBI) clarified its position in a policy statement in January, confirming that it will apply the bonus cap to all the CRD IV MiFID firms it regulates.

The European Banking Authority (EBA) guidelines on sound remuneration policy apply as a matter of EU and Irish law to credit institutions, CRD IV investment firms in Ireland, and to the CBI as the competent authority for less significant credit institutions and CRD IV investment firms in the country.

CRD IV investment firms are subject to the bonus cap by virtue of Regulation 82 (1) (g) of SI 158 of 2014, which implements CRD IV in Ireland.

A CRD IV investment firm is defined in Article 4 (1) of the Credit Requirements Regulation (CRR) (EU/575/2013) as a MiFID firm other than a CRD IV-exempt MiFID firm (a firm that is not authorised to hold client monies or provide ancillary services under Annex B but provides a combination of MiFID services including reception and transmission of orders, execution of orders, portfolio management and investment advice) as defined in Article 4 (2) (c) of the CRR.

The CBI policy note confirms that the recent EU proposals 2016/0364 (COD) do not affect the bonus cap, which will continue to apply.

Legal effect of the CBI statement

While the CBI policy on bonus caps is in the form of a policy statement and the underlying EBA view is in the form of a guideline, these provisions are expected to take effect in Ireland by way of conditions on authorisation, the breach of which will mean administrative sanction.

In conclusion, UK MiFID firms that are regulated under CRD IV will need to be aware that the bonus cap will still apply to them in Ireland.

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