

Jail for Irish Investment Fraud

Four former executives of the Irish investment manager Custom House Capital (“CHC”) were sentenced to jail time for conspiracy to defraud investors earlier this month. This is among the first examples of custodial sentences being imposed in Ireland for fund related activity. Apart from compliance issues, the case highlights the importance of providing relevant information to authorities regarding professional misconduct in large corporations. In Ireland, there is now legislation that protects individuals (i.e. whistle-blowers) who provide significant disclosures from penalisation or negative treatment.

Background

Prior to the great financial crisis, Irish based CHC had entered into agreements to buy properties in mainland Europe. It was found that they began to use client funds in 2008 to meet related obligations as market conditions deteriorated, without informing or getting authorisation from their clients. Prosecutors argued that the valuations received by clients were misleading and did not show the true locations of their funds. The scheme has held to have purposely misled clients for over two years.

In 2011, at the request of the Central Bank of Ireland, High Court inspectors were appointed to CHC, They found that €56 million of client money had been wrongfully transferred to property investments. Shortly after, liquidators were appointed to wind down the company by 2025. Recently, CHC’s liquidator, stated that €61 million in client funds were misappropriated. However, 64% of this amount (approximately €41 million) has been recovered and as of last March clients had received €39 million.

Findings

Judge Orla Crowe in the Dublin Circuit Criminal Court said that this was a sophisticated operation where the perpetrators grossly abused client trust. The vast majority of CHC’s clients were individuals saving for retirement and suffered grave financial losses. 202 victims submitted impacts statements to the court giving details of their loss and related stress, upset and worry.

Judge Crowe stated that conspiracy to defraud is a common law offense that does not have a fixed penalty. She sentenced Harry Cassidy (the company’s former CEO) to six years and 10 months, John Whyte (the former head of private clients) to four years, Paul Lavery (head of finance) to three years, and John Mulholland (a non-executive director) to one year.

Legal Support for Irish Whistleblowers

The primary legislation that protects whistleblowers from penalisation in Ireland is the Protected Disclosures Act 2014 (the “PDA 2014”). Recently, there has been an update to this legislation by means of the Protected Disclosures (Amendment) Act 2022 (the “New Act”) that clarifies certain aspects of the PDA 2014. The New Act expands the scope of who can rely on these protections to include directors, non-executives, and shareholders. In addition, firms are now required to establish procedural infrastructure to address related issues. Other legislative instruments also provide for whistleblower provisions, especially in the financial services sphere, for example under MiFID, UCITS and CRD.

How Clerkin Lynch Can Help

The financial services team in Clerkin Lynch can advise on the drafting of policies and procedures to address whistleblowing requirements as well as on compliance with related terms for regulated firms and their teams. Feel free to contact us for more information.



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