‘Follow the money’ … But how far?

Tackling transnational illicit financial flows through Ireland

Alexander Chance

In a Cabinet meeting on 7 November, the Irish government formally decided to submit its bid for Dublin to host the EU’s new Anti-Money Laundering Authority. The creation of a pan-European institution with a specific mandate to supervise and coordinate various national-level activities against money laundering represents just one pillar of a wider package of measures to tackle illicit financial flows into, from and within the Union. Although the exact details of those measures are subject to ongoing ‘trilogue’ negotiations between the Commission, Parliament and Council, it seems likely that their final shape will constitute a major step towards a more robust and integrated framework for anti-money laundering and countering the financing of terrorism (AML/CFT) across EU member states.

Whether or not Ireland is successful in its application to host the new AML Authority, the bid itself invites a fresh appraisal of the country’s appetite for tackling dirty money. This article argues that, despite an impressive legacy of doggedly pursuing *domestic* criminal assets, successive governments have failed to adapt to Ireland’s role as a leading global financial centre by applying similar determination to tackle illicit financial flows from overseas. If this neglect continues, it may generate systemic reputational risks.

The legacy vs. the new reality

There is justifiable pride in Ireland’s record of aggressively pursuing the proceeds of serious and organised crime. In the aftermath of the killings of investigative journalist Veronica Guerin and Detective Garda Jerry McCabe in June 1996, the Oireachtas swiftly passed two important pieces of legislation that helped to set global standards for ‘hitting the pockets’ of those involved in serious criminality. The Proceeds of Crime Act was based on the concept of non-conviction based asset forfeiture, allowing the State to apply for court orders to restrain, forfeit and even tax the proceeds of crime, using the civil burden of proof and ‘belief evidence’. A related law created the Criminal Assets Bureau (CAB); an independent, multi-disciplinary body charged with denying and depriving criminals of assets derived from criminal conduct. Although Ireland’s proceeds of crime regime has not been without its critics and has been subject to a number of constitutional challenges, the pioneering legislative and institutional framework created over 25 years ago continues to deliver successful outcomes in relieving criminals of their assets – and not just at the national level. Locally, the CAB trains a network of gardaí as divisional asset profilers and, overseas, Ireland’s multi-agency and non-conviction based approach still serves as something of a benchmark for other countries.

Yet the world – and Ireland’s place in the world – has changed markedly since 1996; not least in how the Irish economy has been opened to international capital. Indeed, it is hard to overstate the pace and scale of increase in the volume of financial assets flowing through

Ireland or Irish-administered financial vehicles over the past 15 years, in particular via the investment funds industry. Between 2006 and 2021, total net assets held in Irish domiciled funds leapt from approximately €650 billion to over €4 trillion. Over the same period, assets under administration in Ireland grew from a total of €965 billion to over €5 trillion. In just three years between 2017–2020, cross-border payments in Ireland increased more than threefold. By 2020, Ireland was the largest hedge fund administration centre in the world, servicing 40% of all hedge fund assets. By 2022, Ireland was the domicile for nearly 6% of the world's investment fund assets and 19% of European fund assets, making it the third largest funds centre in the world and the second largest and fastest growing centre in Europe.

Whilst the overwhelming majority of these assets are likely to be from legitimate sources, a number of international bodies – such as the US Federal Bureau of Investigation – have for some time been concerned that the global investment funds industry is being utilised for high-end money laundering, in particular via hedge funds and private equity. In Ireland's case, the International Monetary Fund has sounded the alarm in blunt language, warning not only that 'Ireland is facing substantial ML threat from foreign proceeds of crime due to the prominence of [its] financial sector', but that 'rapid growth in the size of the Irish financial center … has increased further the ML/TF risk from non-resident and cross-border activity', with 'investment funds … particularly vulnerable to ML'. Extrapolating even the most conservative UN estimates of the proportion of global GDP being laundered annually (2 – 5%) implies that very significant sums within the trillions of euro worth of assets domiciled or administered in Ireland may have been generated through illicit activities. Yet less than 0.4% of Suspicious Transaction Reports submitted to the Irish Financial Intelligence Unit last year came from fund administrators/managers or investment firms/intermediaries.

Attractive opacity

In addition to the scale of its funds sector, Ireland presents a number of other features and structures that are attractive to international money laundering, of which Special Purpose Vehicles (SPVs) and Limited Partnerships are two of the most prominent examples.

SPVs are legal structures established by a 'sponsor' company or trust for a narrow and specific objective, typically to segregate and house particular risks, assets or liabilities. They often span several different countries and encompass a wide range of activities, including being used for mortgage-backed securities and aircraft leasing, issuing other debt securities or loan instruments, or serving as cash conduits. In 2021, SPVs in Ireland held assets worth over €1,000 billion, nearly all of which were believed to avail of the controversial 'Section 110' tax neutral status provided for qualifying corporate entities under Irish tax legislation. Previous research has linked SPVs in Ireland to tax avoidance, 'shadow banking' and 'round-tripping' – that is, recirculating capital – out of and back to Russia, facilitated by minimal regulation and opaque and/or complex ownership structures. Even the Department of Finance's own AML risk assessment categorised certain SPVs as posing the highest level of vulnerability to money laundering, especially from overseas actors. Despite this, the Government has consistently shown little appetite to tighten regulation around these vehicles.

Limited Partnerships (LPs) are structures that allow partners to invest in a business venture whilst limiting their liability to the extent of their investment. Domestically, LPs are used for legitimate investment purposes such as venture capital, film-making, property and family investing. However, the 'Pandora Papers' cache of leaked documents from offshore corporate service providers showed that two thirds of Irish LPs' general partners were based in offshore jurisdictions, including Belize, the British Virgin Islands, the Cayman Islands, Panama and the Seychelles. Investigative journalists have found Irish LPs being promoted internationally – including in Russia, Ukraine and Uzbekistan – as opaque, tax-free, offshore and 'off-the-shelf' structures registered in a country with an 'impeccable reputation'. The marketing is no hyperbole: as currently constituted, LPs are not taxable and are not required to register their beneficial owners, nor to have an address in the State, nor in most cases to file accounts. Tellingly, the registration of Irish LPs surged more than sevenfold just before and after the UK tightened reporting requirements around Scottish Limited Partnerships in 2017 – some of which were implicated in major international money laundering cases. In response, the Irish government indicated that it would bring forward legislation to increase the reporting obligations for LPs, though the detail and extent of any such requirements remain unclear.

Seek, and you will find

The lethargic pace at which action is taken to address such deficiencies – and then typically only in reaction to adverse media attention and EU or international pressure – is characteristic of successive governments' approach to this issue. Enthusiastic embrace of Ireland's role as a global financial centre has not been matched by a commensurate effort to proactively address the risks that come with that role. Defenders of the status quo will argue that there is little hard evidence for dirty money from overseas being moved through Irish financial structures. But if relevant bodies are not actively incentivised and sufficiently resourced to engage in the complex and costly business of detecting illicit financial flows from overseas, it is highly unlikely that they will be found. Indeed, previous research indicated that, of the handful of publicised asset forfeiture cases involving high-end international corruption that reached the Irish courts, all had been instigated by foreign – rather than Irish – authorities. Nor is Irish civil society encouraged to play its part in AML/CFT efforts, despite their role being recognised as legitimate by the EU Court of Justice. In June this year, a statutory instrument introduced by the Minister for Finance effectively precluded investigative journalists and civil society organisations from meaningful access to data on firms' beneficial owners – an essential tool in uncovering illicit activities.[i]

The policy environment for tackling illicit financial flows in Ireland is reminiscent of that of its nearest neighbour, which – until very recently and despite multiple credible warnings – allowed the mantra of 'light touch regulation' to shroud dirty money from overseas as it percolated through the financial system, serviced by an ecosystem of professional enablers. By the UK government's own admission, this undermined trust in its economy, endangered the integrity of financial institutions, tarnished the country's reputation, and funded organised crime and corruption. Is the contemporary Irish context so very different? Ireland has a proud record of pursuing domestic criminal assets with vigour and innovation; its government now needs to apply the same determination to tackling transnational illicit financial flows.

Dr Alexander Chance is Head of Policy and Research at Transparency International (TI) Ireland. He is also a Senior Fellow at the Azure Forum for Contemporary Security Strategy and an Associate Fellow within the Organised Crime and Corruption Programme at RUSI.

---

[i] The tension between beneficial ownership transparency for AML/CFT purposes, personal data protection and privacy rights was at the heart of an important judgement by the EU Court of Justice on two joined cases in November 2022. For further analysis of the implications of that judgement, see articles by Paul Egan SC on its relationship to wider corporate transparency, Ádám Földes on the public interest rationale for transparency, and Tymon Kiepe on practical solutions for balancing these purposes and rights in beneficial ownership registers.