

ASSET MANAGEMENT &  
INVESTMENT FUNDS

## Does delegation equal outsourcing? *Irish funds and CBI draft outsourcing guidance*



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The answer given by the Central Bank of Ireland (CBI) is yes, delegation and outsourcing are to be treated as the same in the CBI's February 2021 consultation on cross-industry outsourcing guidance.

For UCITS management companies, AIFMs, UCITS and AIFs, this means that existing delegation arrangements under UCITS and AIF sectoral legislation, as well as any other outsourcing arrangements, will need to satisfy the CBI's requirements on outsourcing. Fund administrators and depositaries will also need to assess the implications of the proposed outsourcing guidance on their business models. Firms can apply the guidance proportionately to the scale of their business. The criticality and importance of the outsourced functions is key.

5 MIN READ



### Summary

The CBI plans to publish finalised outsourcing guidance for regulated entities late in 2021 following completion of the consultation process. Under the draft guidance:

- UCITS management companies, AIFMs, UCITS and AIFs are in scope
- the CBI considers delegation to be the same as outsourcing
- the CBI allows the principle of proportionality to apply and acknowledges that certain aspects of the guidance may not be appropriate to all regulated firms due to their nature, scale and complexity
- the board of directors will have ultimate responsibility for outsourcing risk assessment and management
- SLAs need to be in place with each outsourcing service provider underpinning the written legally binding contractual arrangements
- a documented outsourcing strategy, policy and register will need to be in place
- the outsourcing register will need to be periodically submitted to the CBI starting January 2022

“...delegation and outsourcing are not considered by the Central Bank of Ireland to be different concepts



### Timing and analysis

The CBI has indicated that it aims to issue the outsourcing guidance in its final form in late 2021. Funds and fund management companies analysing their current delegation arrangements for compliance should do so between the date the final guidance is issued and its effective date. Neither the draft guidance nor consultation paper indicates whether there might be an implementation period or grandfathering arrangements for any or all of its requirements.

Analysis will include whether existing risk management frameworks and governance arrangements that UCITS management companies, AIFMs, UCITS and AIFs have in place to monitor delegate oversight are aligned with and sufficient to satisfy the CBI's expectations for compliance with its outsourcing guidance. If other outsourced service providers, or OSPs, are appointed these arrangements will also need to be analysed.

### Investment fund sectoral legislation

The CBI considers that the obligations of fund service providers with regard to outsourcing are well covered in the relevant sectoral legislation, regulations and guidance. In particular the delegation provisions under UCITS and AIFMD legislation and the CBI's fund management company guidance will be relevant. The outsourcing guidance is relevant to fund service providers assessing the adequacy and effectiveness of their outsourcing/delegation risk management frameworks. Sectoral legislation applies where it is more prescriptive or there is a discrepancy between it and the guidance. If sectoral legislation is silent on a certain point, the CBI expects firms to look to the supervisory expectations in the guidance.

If a firm diverges from the guidance to ensure compliance with the relevant sectoral legislation, the firm is expected to explain the reason, upon request, clearly evidencing the rationale for their approach and show that it has been considered and approved by the board.

**“***If sectoral guidance is more prescriptive, then it will take precedence over this Guidance.*





### Proportionality

In adopting the outsourcing guidance, the nature and extent of the measures may be applied by a firm in a proportionate manner having regard to the nature, scale and complexity of its business and the degree to which it engages in outsourcing to implement its business model. A firm must assess whether each outsourced service or activity is critical or important. This will also inform the proportionality assessment. Criticality and importance have a specific meaning in the draft outsourcing guidance.

### Governance by the Board

The board is ultimately accountable for the effective oversight and management of outsourcing risk. The draft guidance sets out the CBI's specific expectations of the board to ensure this. Some of these are aligned with principles in the CBI's Fund Management Company Guidance, for example the requirement to assign responsibility for oversight of outsourcing risk and outsourcing arrangements to an appropriate designated individual.

“The Central Bank acknowledges that it may not be appropriate for smaller, less complex regulated firms to adopt, in full, all measures set out in the Guidance.”

**Documenting the outsourcing framework**

Firms are expected to have a sound outsourcing risk management framework. The CBI expects the board to have a documented outsourcing strategy and outsourcing policy. An outsourcing register will need to be maintained and will need to be periodically submitted to the CBI by way of regulatory return. An industry letter will issue to clarify the frequency of this return. The CBI will expect to be notified of existing, new and amended outsourcing arrangements. Funds will already be used to notifying the CBI of the appointment of delegates under existing CBI authorization and supervisory requirements.

The CBI expects that delegation/outsourcing arrangements are governed by formal, legally binding contracts containing provisions set out in the outsourcing guidance. For funds, some delegation arrangements under UCITS and AIF sectoral legislation are already required to be made by way of formal written appointment containing prescribed conditions. Under the guidance, delegation/outsourcing arrangements should be supported by service level agreements (SLAs).

**Intra-group, chain outsourcing and other considerations**

The guidance applies in the same way to third party OSPs as it does to entities within the same group and to regulated entities as it does to unregulated entities. Sub- or chain outsourcing and offshoring are given specific consideration in the CBI draft guidance. Concentration risk is viewed with particular concern where there are a limited number of providers of certain services, for example in the case of cloud service providers or other specialist service providers that may be difficult to substitute.

**General requirements**

The CBI draft guidance also has sections setting out detailed expectations for developing outsourcing risk management frameworks, criteria for due diligence reviews, disaster recovery and business continuity management and ongoing monitoring.

**Next Steps**

The consultation period closes on 26 July 2021. The CBI plans to publish its final outsourcing guidance later in 2021. The finalised guidance is unlikely to be substantially different from the consultation draft.

No effective date, implementation period or grandfathering arrangements are suggested in the draft guidance. There is a targeted effective date of January 2022 for regulated firms to submit the outsourcing register to the CBI by way of regulatory return.

The A&L Goodbody Asset Management & Investment Funds [team](#) is engaging in the consultation process, staying tuned to the progress of the CBI’s outsourcing guidance and planning how it can support clients and prepare for its implications on the wider funds industry.

We have already begun talking to our clients about governance and practical implications. Once the CBI outsourcing guidance is issued in its final form, there will be more certainty about its implications and we will issue a further update with more details at that time. Contact us to help you understand the requirements and plan for any possible implications of the outsourcing guidance on your fund’s business.



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