

Fund Management Company Guidance

– Delegate Oversight

The Central Bank of Ireland (the **Central Bank**) commenced its review of fund management companies in September 2014 and issued its final guidance on 19 December 2016. Along with this, the Central Bank published its feedback statement ([Feedback Statement to CP86 – third consultation](#)) on CP86 - Consultation on Fund Management Company Effectiveness - Managerial Functions, Operational Issues and Procedural Matters (the **Third Consultation**). The Third Consultation includes new rules for fund management companies on an effective supervision requirement and on the retrievability of records. This concludes the work of CP86 which has been ongoing since 2014 and comprised three separate consultations which focused, in particular, on governance, compliance and effective supervision.

While the Central Bank's [Fund Management Companies – Guidance \(December 2016\)](#) provides for a transition period up to 1 July 2018 in relation to the streamlining of managerial functions to six managerial functions, the organisational effectiveness role and the retrievability of records rule, the Central Bank's UCITS Q&A dated 19 December 2016 and the AIFMD Q&A dated 3 January 2017 clarified that in relation to funds authorised before 1 November 2015, the provisions of (i) delegate oversight and (ii) director time commitments are effective from November 2015.

Delegate Oversight Guidance

Part 1 of the Delegate Oversight guidance focuses on the role of boards where significant tasks are delegated externally and sets out a framework for good practice in relation to the monitoring and oversight of delegates, delegated tasks and tasks to be retained. While the ultimate responsibility for any functions delegated remains with the board, the guidance sets out specific guidelines on the supervision of delegates in relation to investment management, distribution, risk management and investment operations and administration.

The Delegate Oversight guidance also addresses matters to be considered by boards of externally managed investment companies, self-managed investment companies, internally managed AIFs and ICAVs.

In practice most boards of Irish fund management companies will already follow the requirements of the Delegate Oversight guidance as a matter of good corporate governance however, Part 2 of the guidance includes some areas of focus which boards should take into account when reviewing current governance and oversight arrangements. We have included a summary of these areas below:

New Fund Approval – before approving the launch of a new fund, the board should be provided with information on:

- Investment objective and policies;
- Assets to be invested in and any benchmark against which the new fund's performance will be calculated;
- Investment processes adopted by the portfolio manager, credentials of the portfolio manager and the trading protocols in place such as best execution, commission sharing and allocation to brokers;

- Any restrictions and/or limitations, frequency of dealing, basis for pricing units, anti-dilution measures etc;
- Whether securities lending will be undertaken, including related collateral and counterparty risk information; and
- Use of financial derivatives and the related controls and policies in place.

Overview of delegated tasks by means of:

- Onsite visits to the investment manager and other service providers;
- Meetings with senior management in the investment manager and other service providers; and
- Regular presentations and reports from the delegates to address compliance with legal and regulatory requirements, business continuity planning, audit reviews, breaches, errors etc;

Distribution Strategy – Board to approve any proposed distribution strategy for a new fund:

- Details to be provided to the board should include details of who will undertake the distribution, marketing approach, target markets and jurisdictions, any local legal, tax and regulatory requirements, framework to ensure marketing is consistent with the prospectus; and
- Regular reports to be made available to the board in relation to distribution patterns, current progress, sales flows in the period and current pipeline.

Risk Management – Boards to adopt a risk management framework:

- Risk management framework to identify risks, risk appetite, risk mitigants and policies to measure and monitor risk;
- Risk management framework to be appropriate and proportionate to the nature, scale and complexity of the funds; and
- Periodic review of the risk management framework.

Operations and Administration:

- Board to ensure that any proposed delegate has sufficient capability and flexibility to manage the business; and
- Board to receive regular reports from the depositary and administrator and reports on performance, breaches, anti-money laundering, IT systems any outsourcing arrangements.

Support and Resourcing – Board to ensure that based on the nature, scale and complexity of the funds under management that it has sufficient resources to carry out its functions properly:

- Board will require support and resources in monitoring developments between board meetings, the management of meetings and documents, preparation of reports and the audited annual financial statements, the review of policies and procedures etc;

- Where an individual director is designated with a managerial function, the board must be satisfied that the director has necessary skills and expertise to carry out the role, has sufficient support and resources to perform the role and that the board as a whole will not compromise its any independence requirement.

What To Do Now

The Delegate Oversight guidance is in effect for existing fund management companies from November 2015. Boards of fund companies, as set out above, should review current governance and oversight arrangements to determine what, if any, changes will be required to reflect the Delegate Oversight guidance.

How A&L Goodbody can help

We will be working closely with our clients in relation to the impact of CP86. In the meantime, if you have any queries, please contact one of the partners listed or your usual contact at A&L Goodbody.

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