

Fund Management Company Guidance – Organisational Effectiveness

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. 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 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 the Organisational Effectiveness guidance are effective from the date that a fund management company has appointed a person to the role or 1 July 2018 at the latest.

Organisational Effectiveness Guidance

Part II of the guidance provides for the new Organisational Effectiveness role. The purpose of the role is to ensure that there is an independent director who has the specific task of keeping the effectiveness of the organisational arrangements of the fund management company under review, with his or her reports being submitted to the board for discussion and decision. The person fulfilling the role is required to be a 'change leader' and will 'drive through the change agenda'. They will be on alert for organisational issues and to escalate these to the board as appropriate. As such, the position is designed to ensure that the fund management company is organised and resourced in the most appropriate manner on an on-going basis.

The guidance requires fund management companies to designate an independent director (who could be the chairperson of the board) to undertake an Organisational Effectiveness role. The designated person should not perform any managerial functions relating to:

- Investment Management;
- Fund Risk Management;
- Operational Risk Management;
- Regulatory Compliance;
- Distribution; or
- Capital and Financial Management (Managerial Functions).

The types of matters to be covered under this role include:

- reviewing the organisational structure and arrangements of the fund management companies, including in relation to the Managerial Functions to ensure they remain fit for purpose;
- monitoring the adequacy of the internal resources of the fund management company for its day-to-day Managerial Functions;
- keeping the composition of the board under review;
- oversight of internal audit;
- organising periodic board effectiveness evaluations and overseeing how well the decisions taken by the fund management company and the arrangements for the supervision of delegates are working in the interests of investors; and
- considering the conflicts of interest affecting fund management company and its investment funds under management and initiating action, such as escalation to the board, where these are having, or are likely in the near future to have, an adverse impact.

What to do now

The Organisational Effectiveness guidance is in effect for funds authorised before 1 November 2015 from the date that a fund management company has appointed a person to the role or 1 July 2018 at the latest. Boards of fund management companies should review current governance arrangements to determine what, if any, changes will be required to reflect the Organisational Effectiveness guidance.

How A&L Goodbody can help

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

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