

Fund Management Company Guidance – Externally Managed Funds

The Central Bank of Ireland (the Central Bank) commenced its review of fund management companies in September 2014 and has now issued its final guidance. 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 included 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 published the first three chapters of its fund management company guidance in November 2015 on (i) delegate oversight; (ii) organisational effectiveness; and (iii) directors' time commitments. The Central Bank has now issued both the initial three chapters and the final three chapters of its [Fund Management Company Guidance](#) which now also covers (i) managerial functions; (ii) operational issues; and (iii) procedural matters.

Externally Managed Funds

The majority of the CP86 guidance relates specifically to UCITS management companies, AIFMs, self-managed UCITS and internally managed AIFs (i.e. fund management companies), some elements of the guidance will apply to the Irish investment companies and ICAVs which have appointed an external UCITS manager or AIFM (**Externally Managed Funds**).

Delegate Oversight

While most of the Delegate Oversight guidance is not applicable to Externally Managed Funds, paragraphs 54 to 64 deal specifically with "Boards of externally-managed investment companies". This section of the guidance requires that boards of Externally Managed Funds:

- continue to be responsible for ensuring that they comply with regulatory obligations and support the ability of the fund management company to also do so;
- retain ultimate responsibility for the management of the funds and their delegates;
- retain responsibility for issuing the prospectus;
- ensure that the fund management company performs delegated tasks to an appropriate standard;
- expect to receive and be satisfied with regular reports from the fund management company describing fund performance, significant developments in the distribution, risk management and operational and administrative tasks; and
- ensure that the fund management company's report is not solely the transmission of reports received from its delegates.

Other Obligations

Notwithstanding the appointment of a fund management company, the board of an Externally Managed Fund will continue to have statutory directors' duties under the Companies Act 2014 or the ICAV Act 2015 which, among other things, will require the board to ensure that the investment company or ICAV maintain proper books of accounts, prepare financial statements and a directors' report, hold an annual general meeting and make relevant filings with the Companies Registration Office.

The Directors' duty to act with due skill, care and diligence will include a continuing need to hold regular board meetings to review the company's finances, review the performance of its delegates and take action to correct any problems which may arise. The board will also continue to have responsibility for the information contained in, and the issuing of, the prospectus(es) of the fund(s).

The Irish Funds corporate governance code, which is a voluntary code which applies to Irish authorised collective investment schemes and management companies, would also continue to apply to Externally Managed Funds.

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 below or your usual contact at A&L Goodbody.

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