

CP86 - Retrievability of Records

Introduction

The Central Bank of Ireland (the **Central Bank**) published “Fund Management Companies – Guidance (December 2016)” which sets out new guidance for UCITS management companies, AIFMs, self-managed UCITS and internally managed AIFs (each a **Fund Management Company**) and aims to streamline the managerial functions into six categories over a transition period up to 1 July 2018.

Record retention, archiving and retrievability of records

Part V “Operational Issues” sets out the Central Bank’s **minimum expectations** with respect to the retention, maintenance, security, privacy, preservation and accessibility (collectively, **Document Management**) of all relevant documentation and records, a non-exhaustive list of which is set out in Schedule I (**Relevant Documents**).

Fund Management Companies are required to keep all Relevant Documents in a way that makes them immediately retrievable in or from Ireland. The Central Bank has outlined that ‘*immediately*’ means documentation requested before 1pm (Irish time) should be provided to the Central Bank on the same day and documentation requested after 1pm (Irish time) should be provided to the Central Bank before 12 noon on the following day on which the Central Bank is open for business.

As the nature of engagement between Fund Management Companies and the Central Bank is largely based on documentation and records, it is vital that Fund Management Companies implement a high standard of Document Management as it will be one of the principal means by which the Central Bank can assess, evidence and establish:

- the control and resources of a Fund Management Company;
- compliance with relevant laws, regulations, conditions and rules;
- the quality of oversight, governance and control provided by the directors and Designated Persons; and
- the fitness and probity of directors and Designated Persons.

Document Management Policy

Each Fund Management Company must independently determine its own Document Management Policy including what documents are relevant to its particular circumstances and operation. The record retention policy should:

- be approved by the directors of the Fund Management Company and reviewed on an annual basis;
- be actively enforced and audited (internally or externally);
- be appropriate for the Fund Management Company’s nature, scale and complexity; and
- take into consideration not only business and operation requirements, but also the requirements of all applicable laws, regulations, conditions and rules respecting the fund management company and its investment funds under management.

Practical Decisions for Fund Management Companies

The board of each Fund Management Company must decide how the best practical way of adhering to the guidance. They must decide, subject to relevant laws, regulations, conditions and rules:

- whether Relevant Documents should be retained in hard or electronic format, or as original or copy doc;
- the location(s) where Relevant Documents are stored;
- the period of retention, the method for retrieving Relevant Documents;
- how to ensure immediate and unfettered access to Relevant Documents;
- how to ensure security and privacy; and
- how to ensure the document destruction policy is strictly enforced (?)

Central Bank Minimum Requirements

The Central Bank will require that each Fund Management Company has a clearly defined and understandable records retention schedule in place and we can provide an example of this schedule.

The Central Bank require that Relevant Documents should be easily identifiable as pertaining to the fund management company and the investment funds under its management and the governance of both. Each Relevant Document must have a full audit trail in place to provide assurance and proof that there are sufficient procedures and processes in place which will robustly protect against and seek to avoid any manipulation of hard copy or electronic (soft-copy) documents and record any manipulations should they occur.

Relevant Documents should be sufficient to demonstrate both control and compliance with the provisions of relevant laws, regulations, conditions and rules.

Each Fund Management Company should have immediate and unfettered access to Relevant Documents. This means having equal access to documents held locally (in Ireland) and remotely (in other jurisdictions), including those held within group companies and/or third party service supplier networks. The Relevant Documents should be readily accessible, easily retrievable and available on request by the Central Bank within the time periods set out above.

For meetings with the Central Bank at the registered offices of the Fund Management Company, the attending directors and Designated Persons should be in a position to produce all Relevant Documents upon request by the Central Bank.

A Fund Management Company’s directors should ensure, through contractual arrangements or by other means, that they and the Designated Persons have and will retain at all times immediate and unfettered access to all Relevant Documents.

A Fund Management Company that fails to provide any Relevant Documents in the timeline and form reasonably required by the Central Bank may be viewed by the Central Bank as not having provided the Relevant Documents in compliance with the regulatory requirements described above.

Schedule I: Non Exhaustive List of Relevant Documents

Relevant Documents of the Fund Management Company	Relevant Documents of the investment fund
Constitution	Constitutional Document
Business Plan / Programme of Activity	Prospectus / Supplement(s)
Annual / Interim Audited Financial Statements	Key Investor Information Document
Minimum Capital Requirements Data	Risk Management Process / Risk Mitigation Plans
Internal Audit Reports / Auditors Findings	Annual / Interim Audited Financial Statements
Director – Letter of Appointment	Administration Agreement
Designated Person – Letter of Appointment	Investment Manager Agreement
Relevant Contracts – Legal Agreements	Depository Agreement
Business Continuity Plan	Management Agreement
Board Pack / Board Reports / Board Minutes	Prime Broker Agreements
Management Accounts	Statutory Filings
Statutory Filings	Investment Performance / Risk Management Reporting
Anti-Money Laundering Reporting	Board Pack / Board Reports / Board Minutes
Records / Engagements around Breaches / Errors	Auditor's Report
Detailed Firm Procedures and Processes	Statutory Filings
Reports to Designated Persons	Administrator / Depository (Custody) Reports
Documentation Evidencing Designated	Central Bank Regulatory Correspondence
Persons Performing their Designated Roles	
Reports to Directors	
Central Bank Regulatory Correspondence	

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