



June 2016 - CP86 Update

## Central Bank publishes its final consultation paper on Fund Management Company Effectiveness

### ▣ Background and Introduction

In its feedback statement on Consultation Paper CP 86 – Consultation on Fund Management Company Effectiveness – Delegate Oversight (**CP 86**), published in June 2015, the Central Bank of Ireland (the **Central Bank**) set out under the heading of *Next Steps*, that it would publish additional publications to provide guidance to fund management companies on the following matters:

1. Delegate Oversight;
2. Organisational Effectiveness;
3. Directors' Time Commitments;
4. Managerial Functions;
5. Operational; and
6. Procedures

On 4 November 2015, the Central Bank published its first publication setting out guidance for fund management companies which covers the first three areas listed above.

For further information on any of the issues discussed in this article please contact:



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The Central Bank has now published its third and final consultation on fund management company effectiveness which deals with the areas listed at 4-6 above. The paper is entitled *Consultation on Fund Management Company Effectiveness – Managerial Functions, Operational Issues and Procedural Matters* (the **Consultation Paper**). A link to the Consultation Paper can be found [here](#).

As was the case for CP86 and the feedback statement, the term **fund management company** includes a UCITS management company, an authorised AIFM, a self-managed UCITS investment company and an internally managed AIF.

## Key Aspects of the Consultation

As its title suggests, the Consultation Paper focuses on the following areas:

1. Governance – the manner in which the directors of fund management companies should perform their roles and guide the company;
2. Compliance – the manner in which designated persons carry out their managerial functions for the fund management company; and
3. “Supervisability” – the capacity of the Central Bank to engage with the fund management company including access to its records, directors and designated persons.

The Central Bank is of the view that a fund management company which has good structures and procedures in place around these three areas has a level of substance which can enhance investor protection.

Some of the commentary and draft guidance contained within the Consultation Paper would be in line with what may have been expected, based upon the consultations and guidance issued by the Central Bank to date. However, it also confirms a number of important points and contains some points which would not have been addressed previously. These include:

## Organisational Effectiveness

The Central Bank had confirmed that fund management companies authorised on or after 1 November 2015 should not delay implementing the requirements in relation to the Organisational Effectiveness role as outlined in Part II of its Fund Management Companies Guidance of November 2015.

## Location of Directors & Designated Persons

The Central Bank is proposing the following new rules around the location of Directors and Designated Persons:

A fund management company which has a PRISM impact rating of Medium Low or above will be required to have at least:

1. three Irish resident directors or at least two Irish resident directors and one designated person based in Ireland;
2. two thirds of its directors in the EEA; and
3. two thirds of designated persons in the EEA.

A fund management company which has a PRISM impact rating of Low will be required to have at least:

1. two Irish resident directors;
2. two thirds of its directors in the EEA; and
3. two thirds of designated persons in the EEA.

Previously, the Central Bank had indicated that it would require designated persons to be located in Ireland. The proposal to allow designated persons to be located outside Ireland is to be welcomed to the extent that it brings greater flexibility and potential operational efficiency. However, we would suggest that designated persons should also be permitted in third countries outside the EEA.

## Consultation Period and Transitional Period

Should you have comments or queries arising out of the Consultation Paper, please share them with your usual contact at Dillon Eustace. The closing date for submissions on the Consultation Paper is **Friday 26 August 2016**.

The Central Bank is expected to provide a transitional period of one year following the completion of the consultation process for fund management companies to comply with the new rules and guidance.

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