

Governance  
Code  
Introduced for  
Irish Funds

DILLON  EUSTACE

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## GOVERNANCE CODE INTRODUCED FOR IRISH FUNDS

### Introduction

The Irish Fund Industry Association (“**IFIA**”) has published its “Corporate Governance Code for Collective Investment Schemes and Management Companies” (the “**Code**”). The IFIA has also published a questions and answers paper (“**FAQ’s**”) to compliment the Code and support its introduction.




### Background Information

The Central Bank had requested the IFIA in April 2010 to develop a voluntary Corporate Governance Code for the funds industry in Ireland. An IFIA steering group (which included representation from a wide range of industry participants) was established to lead the project. Following considerable engagement with and input from the Central Bank, a draft Code was drafted and circulated in early 2011 to the funds’ industry for consultation. Significant feedback was received from the fund’s industry as a result of the consultation, subsequent to which further engagement with the Central Bank took place – resulting in a final agreed Code.

### Summary

The following is a summary of the main points of the Code:

#### **General Applicability**

-  The Code is a voluntary Code and therefore where a board adopts the Code but decides not to apply any provision of the code, it must set out its reasons why in the Directors’ Report accompanying the annual audited accounts, or alternatively publish the information through a publicly available medium (e.g. website) detailed in the annual report.
-  If the Code is not adopted, there are no immediate implications other than the Central Bank may determine in 18 months time (when an analysis is done) to compulsorily apply the Code to funds and management companies and apply the Central Bank’s Administrative Sanctions regime to the Code.
-  Whether or not funds listed on a regulated market adopt the Code, they will still have an obligation to disclose details regarding corporate governance in the Directors’ Report accompanying the annual audited accounts pursuant to S.I. 450 of 2010.

- ▣ The Code relates to all Irish domiciled funds and management companies except management companies appointed by corporate funds.
- ▣ The Code becomes effective from 1st January 2012, with a twelve month transitional period i.e. financial years commencing on or after 1<sup>st</sup> January 2012.

### **Composition of the Board**

- ▣ Three directors is recommended as the minimum size for a board.
- ▣ It is recommended a board comprise a majority of non-executive directors. A non-executive director is defined for the purposes of the Code as a person who is not directly involved in the day to day discretionary investment management of the fund.
- ▣ It is recommended that a board comprise at least one independent director who would not be an employee, partner, significant shareholder or director of a service provider firm, or provider personally of services receiving professional fees (other than directorships fees) from the fund or management company.
- ▣ It is suggested that the following criteria be considered by a board, and given reasonable weight when determining if a director is independent (i.e. whether a person has the ability to exercise sound judgement and decision making independent of the views of the promoter, the service provider(s), political interests or inappropriate outside interests):-
  - (i) any financial or other obligation the individual may have to the authorised fund, management company, its promoter, or its directors;
  - (ii) whether the individual is, or has been employed by the promoter, investment manager, or their affiliates in the past 3 years, and the post(s) so held;
  - (iii) whether the individual represents a significant shareholder of the fund or management company, its promoter or its investment manager;
  - (iv) any remuneration received directly or indirectly, by the director in the course of providing non director services to the fund or management company.
- ▣ It is strongly recommended that at least one director be an employee, partner or director of the promoter or investment manager.

- ▣ There must be a non-executive Chairman appointed to the Board of the fund or management company.

### **Time Commitments**

- ▣ A board must document the time commitment expected from each director in a letter of appointment.
- ▣ Directors are required to disclose in writing to a board their other time commitments, including time devoted to the role of directors of collective investment schemes domiciled in foreign jurisdictions (“Foreign CIS”).
- ▣ A board must satisfy itself that the directors have sufficient time to fully discharge their duties.
- ▣ There is a rebuttable presumption that a maximum of eight directorships held outside Irish and non-Irish funds and management companies (“Non-Fund Directorships”) may be held without impacting a director’s time available to fulfil his or her role and functions as a director of a fund or management company.
- ▣ Non-Fund Directorships are deemed not to include:
  - (i) other directorships of entities with which the director is deemed to be affiliated i.e. group directorships;
  - (ii) directorships of any company, subsidiary or other non-fund entity established or promoted by a promoter of Irish and/or Foreign CIS, or any affiliated company of a promoter of Irish and/or Foreign CIS;
  - (iii) directorships held in a body engaged in public interest, community or charitable purposes;
  - (iv) directorships to facilitate the incorporation of companies;
  - (v) directorships in companies not actively trading.

## Role of the Board

- ▣ Key/strategic decisions relating to a fund or management company should be considered by the board, including, but not limited to:
  - (i) creation/termination of new sub-funds and classes of shares;
  - (ii) changes in investment objectives, policies and restrictions;
  - (iii) temporary suspension in the calculation of net asset value;
  - (iv) approval of dividends, fees and expenses of the applicant firm;
  - (v) appointment and removal of service providers;
  - (vi) anti-money laundering and counter-financing of terrorism risks of the fund or management company;
  - (vii) approval of financial statements of the fund or management company; and
  - (viii) any other decisions of a strategic nature.

## Meetings

- ▣ A board should normally meet quarterly. For non-UCITS funds, a board could meet less frequently if they believe it is justified but this must be disclosed in the “comply or explain” statement in the Directors’ Report accompanying the annual audited accounts.
- ▣ All directors are expected to attend and participate. An attendance schedule should form a part of the annual informal board performance review process.

## Reviews

- ▣ A board should review the overall board’s performance and that of individual directors annually with a formal documented review taking place at least once every three years.

- ▣ Funds and management companies should formally review board membership at least once every three years.
- ▣ The Chairman of a board should be reviewed at least once every 3 years.
- ▣ A board should document its procedures for dealing with conflicts of interest and should review compliance with those procedures at least annually.

## Next Steps

We suggest that the Code and FAQs be tabled at forthcoming board meetings of funds and management companies so that boards may consider the adoption of the Code.

In the interim, if you have any queries or if you require a copy of the Code and FAQs, please feel free to contact your usual contact in Dillon Eustace.

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### Contact Points

***For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact your usual contact in Dillon Eustace.***

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