



December 2016 - CP86 Update

Central Bank publishes outcome of third consultation on Fund Management Company Effectiveness

▣ Background and Introduction

Following on from its third and final consultation on Fund Management Company Effectiveness – Managerial Functions, Operational Issues and Procedural Matters (“**Third Consultation**”) issued in June 2016, related to Consultation Paper 86, the Central Bank of Ireland (the “**Central Bank**”) has now published a final version of the Fund Management Companies Guidance (the “**Guidance**”). A link can be found [here](#). It has also published a feedback statement which outlines the rationale for the final position taken on certain matters (the “**Feedback Statement**”). A copy of the Feedback Statement can be found [here](#).

The Guidance now sets out, in final form, the following six chapters:

1. Delegate Oversight;
2. Organisational Effectiveness;
3. Directors Time Commitments;
4. Managerial Functions;
5. Operational Issues; and
6. Procedural Matters.

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



Cillian Bredin

DD: +353 (0)1 673 1889

cillian.bredin@dilloneustace.ie



David Walsh

DD: +001 212 792 4168

david.walsh@dilloneustace.ie

The term **fund management company** includes an Irish domiciled UCITS management company, authorised AIFM, self-managed UCITS investment company or ICAV and an internally managed AIF.

Key Aspects of the Feedback Statement

Following significant industry feedback on the Third Consultation, with 54 responses being received, the Central Bank has confirmed the following decisions in its Feedback Statement:

Location of Directors & Designated Persons

The new rule around the location of Directors and Designated Persons which were proposed in the Third Consultation (the “**Location Rule**”) was the focus of a significant number of responses received by the Central Bank.

In the Feedback Statement, the Central Bank discussed the responses received and it presented its analysis of the issues arising under the Location Rule, under the headings of ‘Effective Supervision’, ‘Impact’ and ‘Indirect Impact’.

The outcome of this analysis by the Central Bank is that, having *been ‘swayed...to a certain extent by arguments concerning expertise and the need to facilitate organisational models which draw appropriately on the expertise of the promoter/investment manager’* it has decided to adjust the calibration of the “effective supervision” requirement to permit more involvement by persons located outside the EEA by reducing the ratio from “at least two thirds” to “at least half” of directors and managerial functions in the EEA. The Guidance also confirms that at least half of the managerial functions must be carried out by at least two Designated Persons in the EEA.

The final Location Rule¹ is as follows:

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. half of its directors in the EEA; and
3. half of its managerial functions performed by at least two of designated persons in the EEA.

¹ The Location Rule is not set down in the Guidance. This will be incorporated into forthcoming Central Bank AIF Regulations and in the forthcoming amendments to the CBI UCITS Regulations

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. half of its directors in the EEA; and
3. half of its managerial functions performed by at least two of designated persons in the EEA.

The proposal to allow half of Directors and designated persons to be located outside the EEA is to be welcomed to the extent that it brings greater flexibility and potential operational efficiency. It may also result in the promoters / investment managers who are not located in the EEA carrying out those managerial functions which are most suitable to their expertise for example, the investment management, risk management or distribution managerial functions.

Managerial Functions Guidance

The guidance on managerial functions is largely in the manner proposed in the Third Consultation. However there are certain changes, the principal changes being the following:

1. The deletion of the so-called 'co-location rule' which had required that where designated persons were not working in the same location, they should be employed by the same group of companies.
2. Clarification of the Central Bank's expectations as regards its minimum requirements for record retention, archiving and retrievability of the relevant documents of a fund management company. The Guidance now provides that the fund management company must ensure that there are adequate procedures and processes in place to seek to avoid any manipulation of its hard copy or soft-copy documents.
3. Clarification of what the Central Bank considers the term 'immediate' to mean in the context of providing relevant documents to the Central Bank. The Guidance now provides that where documentation is requested by the Central Bank before 1pm, it should be provided to the Central Bank on the same day. Any request by the Central Bank made after 1pm should be provided before 12 noon on the next business day.
4. The Guidance provides that the retention of records policy of the fund management company should be independently audited, with the Central Bank noting in the Feedback Statement that this audit may be undertaken by an external party or by the internal audit function.

Timing and Transitional Arrangements

Existing management companies must comply with the new rules introduced by the Central Bank by **1 July 2018**.

These new rules relate to (i) streamlining of managerial functions to 6 managerial functions, (ii) the organisational effectiveness role (iii) the retrievability of records rule and (iv) the Location Rule.

Readers should note that any fund management companies authorised between **1 November 2015** and **30 June 2017** are required to comply with the new managerial functions and organisational effectiveness role as at the date of authorisation.

In addition, the Central Bank will only approve applications for authorisation from any new management company submitted on or after **1 July 2017** where the fund management company will be organised in a way which complies with the new rules introduced by the Guidance.

The new rules will be included in the amended Central Bank UCITS Regulations and in the forthcoming Central Bank AIF Regulations (which will replace the Central Bank's AIF Rulebook).

The Central Bank has already updated its AIFMD and UCITS Q&A's to address transitional arrangements related to the Guidance.

Cillian Bredin/David Walsh
Dillon Eustace
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DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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