



Central Bank of Ireland Publishes Consultation on Fund Management Company Effectiveness

On 2 June 2016 the Central Bank of Ireland (“**Central Bank**”) published a consultation paper (“**Consultation Paper**”) setting out further guidance for management companies of UCITS and alternative investment funds (“**AIFs**”).

The publication of the Consultation Paper follows the Central Bank’s September 2014 consultation on fund management company effectiveness (“**CP86**”), which led to the publication of finalised guidance on organisational effectiveness, delegate oversight and directors’ time commitments in November last year. The latest Consultation Paper includes guidance on managerial functions, operational issues and procedural matters. The guidance on managerial functions sets out the Central Bank’s views on the tasks involved in each of the managerial functions.

Who is a Fund Management Company?

The Central Bank uses the term “fund management company” in the Consultation Paper to mean a UCITS management company, an authorised Alternative Investment Fund Manager (“**AIFM**”), a self-managed UCITS investment company and an internally managed Alternative Investment Fund (“**AIF**”) which is an authorised AIFM. Accordingly, the Consultation Paper will not apply to an externally managed UCITS or AIF, whether its external UCITS management company or AIFM is located in Ireland or another EU jurisdiction.

Proposals in relation to Designated Persons

The Consultation Paper also introduces some very significant changes to the Central Bank policy as to who may be appointed as a designated person to discharge managerial functions on behalf of a fund management company (a “**Designated Person**”) and introduces for the first time the possibility of appointing a Designated Person outside Ireland who is not also a director of the fund management company. The Consultation Paper goes on to describe in detail the Central Bank’s expectations of a Designated Person.

In earlier stages of the CP86 consultation process, the Central Bank had identified the following six key managerial functions in respect of fund management companies: (i) regulatory compliance, (ii) fund risk management, (iii) operational risk management, (iv) investment management, (v) capital and financial management, and (vi) distribution. These functions, which are described in further detail in the Consultation Paper, must be discharged by a Designated Person on behalf of the relevant fund management company.

Who may be a Designated Person?

The Designated Person can be a director or employee of the fund management company, or alternatively, can be seconded to the fund management company, on a full or part-time basis, from another firm such as the investment manager or a firm which specialises in the provision of designated persons. The Consultation Paper provides that the Designated Person is a fund management company's line of management that lies between the board of directors and delegates and makes explicit reference to the day-to-day role of the Designated Person.

As noted above, the Central Bank has dropped its previous requirement that any Designated Person, who is not also a director of the fund management company, be resident in Ireland. This development will be welcomed by many fund management companies and their promoters as it will open up the possibility of senior executives within the risk management, investment management, compliance, distribution and similar functions of a fund promoter taking up the position of Designated Person. However, the Central Bank has placed some constraints on the new provisions. In particular, it has introduced a requirement that at least two thirds of the Designated Persons be located in the European Economic Area ("**EEA**") (see section below titled "*Operational Issues – Location Rule*").

The Designated Person should be sufficiently senior in his or her role and be the appropriate individual to meet with the Central Bank as part of the Central Bank's supervisory engagement process. Such individual should also have the capability to review delegates on a continuous basis.

Is it possible for someone to hold more than one Designated Person position?

The Central Bank has clarified that it is possible for a Designated Person to oversee more than one managerial function, and the same Designated Person may carry out the managerial functions of fund risk management and operational risk management. However, the Designated Person who performs at least one of these risk management functions may not also perform the investment management managerial function.

What is the role of the Designated Person?

The Central Bank has provided extensive guidance in the Consultation Paper on the role of the Designated Person. In many respects, this guidance consolidates into a single document the Central Bank's current expectations in relation to Designated Persons. However, it will be important for fund management companies to have regard to this guidance when appointing Designated Persons and updating their letter of engagement in accordance with the new requirements. The guidance in the Consultation Paper covers the following areas:

1. an overview of the role of the Designated Person, including their ongoing day-to-day responsibility for the management of delegates and the obligation on the Designated Person to act in the best interests of the investors in funds under management;
2. the seniority, expertise and experience of the Designated Person;
3. the supervision of delegates by Designated Persons, including the review of policies and procedures of delegates where they are to be relied upon by the fund management company;
4. reporting from delegates to Designated Persons;

5. frequency and format of interaction with delegates, including conference calls, physical meetings and site-visits and the appropriate level of challenge and engagement with delegates;
6. reporting from Designated Persons to the full board, including escalation procedures;
7. the manner in which the Designated Person should ensure oversight of regulatory obligations including (i) monitoring obligations where compliance is a matter of fact (eg, minimum capital requirements), and (ii) complying with requirements which require the exercise of judgment (eg, suitability of cyber security arrangements); and
8. the responsibility of the Designated Person for designing, implementing and reviewing policies and procedures required in respect of each managerial function.

The Central Bank has included a useful section in the Consultation Paper identifying the obligations placed upon fund management companies under the UCITS and AIFMD regimes and providing a suggested allocation of these to individual managerial functions. This checklist should assist fund management companies in formulating the duties and responsibilities of individual Designated Persons and the Designated Person in ensuring the ongoing completion of their functions.

Operational Issues – the Location Rule

The Central Bank has introduced a new “Location Rule” based on the Probability Risk and Impact System (“**PRISM**”) rating of fund management companies.

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

- at least two Irish resident directors; and
- at least two thirds of its directors in the EEA; and
- at least two thirds of Designated Persons in the EEA.

We would expect most fund management companies to have a low PRISM impact rating (including self-managed UCITS and AIFs).

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

- at least three Irish resident directors or at least two Irish directors and one designated person based in Ireland; and
- at least two thirds of its directors in the EEA; and
- at least two thirds of Designated Persons in the EEA

We welcome the flexibility which the Central Bank is allowing by permitting non-director Designated Persons to be based outside Ireland. However, the introduction of a requirement limiting the proportion of Designated Persons and directors located outside the EEA is potentially more problematic for fund promoters who do not have a significant European presence, and we welcome the opportunity to consult with the Central Bank about the potential impact on such promoters.

Operational issues – Retrievability of Records Rule

The Central Bank places a further obligation on the fund management companies which need to be able to keep all of their records in a way that makes them immediately retrievable in or from Ireland, and to produce all of their records immediately on request from the Central Bank. Such records include board minutes, policies and procedures, letters of engagement, contracts with delegates and reports to designated persons. The Central Bank has set out in the Consultation Paper an indicative list of the records which would fall within this rule.

The Central Bank will also require a fund management company to maintain a clearly defined and understandable records retention schedule outlining where the documents are stored and other relevant information in relation to these documents.

Operational issues – Monitored Email Address Guidance

In order to improve the responsiveness of fund management companies to information requests from the Central Bank, the Central Bank is also proposing to issue guidance in relation to setting up a dedicated and monitored email address which must be maintained by fund management companies.

This can be structured as a single email address for all investment funds under management or can be a dedicated email address for each investment fund which the fund management company manages provided that it is monitored on a constant basis (ie, daily).

Procedural Matters

The Consultation Paper also deals with procedural matters which reflect the existing Central Bank's guidance on "*Organisation of UCITS Management Companies*" and which the Central Bank has amended for the purposes of including it in the Consultation Paper to cover fund management companies of both UCITS and AIF.

The procedural matters chapter deals with the application process for authorisation of fund management companies and the information which the Central Bank will require where a fund management company proposes to use its management company passport.

Transitional Period

Once the consultation process has been completed, the Central Bank envisages a one-year transitional period in order to allow the fund management companies to comply with the new rules and guidance. Accordingly, fund management companies will have until **Q3** or potentially **Q4 2017** to achieve compliance. This is to be welcomed as it will allow fund management companies sufficient time to consider the impact of the new guidance on board composition and the completion of managerial responsibilities. There will be some work to be completed in revising business plans and / or programmes of activities and the one-year period should allow this process to be completed in a measured way.

Responses to the consultation are requested by **25 August 2016**. The partners at Matheson intend to submit a response to the Consultation Paper, and we will also be contributing to industry feedback and responses. We would be delighted to speak with you should you have any queries in relation to the consultation, or to discuss your viewpoint regarding any aspect of the proposed guidance.

We will be in contact with our clients to discuss the implications of the Consultation Paper in more detail.

A copy of the Consultation Paper may be accessed on the Central Bank’s [website](#).

Please get in touch with your usual Asset Management and Investment Funds Group contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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