

Central Bank of Ireland Third Consultation – CP86 June 2016

Background and Introduction

In September 2014, the CBI¹ issued a consultation paper entitled *Fund Management Company Effectiveness – Delegate Oversight* ('CP86'). CP86 applies to both UCITS and AIFMD compliant funds and management companies.

In November 2015, the CBI issued guidance in respect of:

- Delegate Oversight
- Organisational Effectiveness
- Directors' Time Commitments

In CP86 June 2016, the CBI addressed:

- Management Functions
- Operational Issues
- Procedural Matters

The June 2016 consultation paper addresses the responsibilities of designated persons under each of the six management functions. In terms of operational issues, guidance is provided as to the location of directors and designated persons, the retrievability of records and maintenance of a designated e-mail address. The procedural matters guidance focuses on detailing the information to be contained in business plans and submissions by fund management companies² seeking authorisation.

The CBI requires that responses to the consultation paper be submitted no later than August 25, 2016.

CP86 June 2016 – Key Updates

1. Management Functions

Designated Persons

The CBI identifies designated persons as representing the line of management between the board of directors and delegates (Administrator/Depositary/Investment Manager). Detailed guidance is provided on the role of designated persons. It makes clear the ultimate oversight role of directors. In contrast it notes that designated persons are responsible for exercising control over delegates on a "day-to-day" basis.

CP86 June 2016 provides guidance on:

- The role of designated persons under each of the six management functions
- Reporting by delegates to designated persons
- Reporting by designated persons to directors
- The requirement for designated persons to hold regular meetings with delegates and the format these meetings should take

¹ Central Bank of Ireland

² UCITS management companies, AIFMs, self-managed UCITS investment companies and self-managed AIFs

- The level of seniority and experience appropriate for designated persons
- Designated person's responsibility for the design and review of policies and procedures relevant to each management function.

CP86 June 2016 recognises that the appropriate frequency of monitoring by designated persons must be determined by the activities of the relevant investment fund. Factors to be considered include:

- The complexity of the investment strategy
- The markets in which the investment fund operates
- The types of investment instruments used
- The frequency of investor subscriptions/redemptions.

Thus monitoring by designated persons does not necessarily need to take place daily but designated persons should be available if required on a "day-to-day" basis.

Fund Management Company Substance

CP86 June 2016 identifies three areas critical to ensuring appropriate substance. The key areas are:

- Governance – organisational structure, conduct of directors, delegate oversight and the organisational effectiveness role are identified as key governance considerations
- Compliance – the manner in which designated persons carry out the management functions is a key determinant of compliance
- *Supervisability* – ease of access to fund management company records, directors and designated persons is critical to *supervisability*.

2. Operational Issues

The CBI proposes that a fund management company which has a risk rating of "medium low" or above will be required to have:

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

The CBI proposes that a fund management company which has a risk rating of "low" will be required to have:

- At least two Irish resident directors;
- At least two thirds of its directors in the EEA; and
- At least two thirds of designated persons in the EEA.

Most fund management companies, including self-managed structures, have a "low" risk rating. Factors impacting the risk rating include:

- AUM³
- Number of sub-funds
- Type of investments (i.e. how risky are the investments and the extent of the use of derivatives)
- Service providers (i.e. the less well established the service providers, the higher the rating).

³ Assets under Management

3. Procedural Matters

This section reflects existing CBI guidance titled *Organisation of UCITS management companies*. The existing guidance has been amended to cover both UCITS management companies and AIFMs. It deals with the application process for authorisation of fund management companies and information required by the CBI where a fund management company intends to use its management company passport.

Our View

- The clarification of the activity required to properly perform the six management functions is welcome.
- The identification of the fundamentally different roles of directors (oversight) and designated persons (“day-to-day” management functions) is also welcome.
- Non-EEA investment managers will potentially be disadvantaged by not being able to perform management functions internally. A substantial lobbying effort is anticipated to address this perceived inconsistency.
- The possibility of management functions being performed by designated persons outside of Ireland is similar to the position which currently exists in respect of the performance of the anti-money laundering (MLRO) function. Consistent with the MLRO experience, we anticipate that most managers will seek to utilise specialist firms to address the management functions in order to both reduce risk and minimise the time burden placed on staff. However, a number of investment managers may choose to internalise the management functions.
- The extensive nature of the management functions will encourage some funds to consider the merits of external management company solutions.

How can KB Associates Assist?

KB Associates offers a range of services to investment funds including:

- The provision of UCITS/AIF management company services
- The provision of designated persons to perform UCITS business plan and AIFMD programme of activity management functions
- The provision of UCITS/AIF operational support

If you would like to discuss any issues raised in this article, please feel free to contact Mike Kirby (+353 1 667 1980), Peter Northcott (+44 203 170 8813) or Mike Parton (+1 345 946 4224).