

## **Irish Central Bank Publishes Consultation on Fund Management Company Effectiveness**

On 19 September 2014, the Central Bank of Ireland (the “**Central Bank**”) published a Consultation Paper on Fund Management Company Effectiveness (the “**Consultation**”) in which it sets out a number of proposed initiatives to further enhance and promote fund management companies’ (and self-managed investment companies’) substantive control over the activities of their delegates.

### **Background**

In light of ongoing discussions at domestic and EU level about substance within UCITS management companies and alternative investment fund managers (“**AIFMs**”), the Consultation provides useful insight into the Central Bank’s thinking on these issues, and further evidence of the level of activity required and expected from those responsible for management of an Irish authorised management company.

The Consultation benefits from the work done by an expert group commissioned by the Central Bank to report on certain aspects of the role of boards of directors, as well as submissions from industry and the findings of the Central Bank following recent interviews with directors and designated persons.

Two of the Consultation’s proposals which are likely to attract most comment relate to the categorisation of designated managerial functions and the need for Irish resident directors on the board.

### **Streamlining Managerial Functions**

The Central Bank is proposing to streamline the designated managerial functions to be performed by UCITS management companies and AIFMs through the restructuring of the overall number of these to six functions, from nine and fifteen respectively. To explain how it is envisaged the streamlined managerial functions will operate, a non-exhaustive description of the role of designated person is provided in the Consultation. The Consultation acknowledges that there will be a transitional arrangement required for existing authorised fund management companies.

In practice, it is clear that the Central Bank does not regard the streamlining of the functions as resulting in a reduction of the level of work required from designated persons, and the reduction in number to six should not be confused with a reduction in Central Bank expectations. The primary reason for the consolidation of functions is to ensure that there is a clear line of responsibility for the various functions as the Central Bank aims to ensure that having similar or potentially overlapping functions does not give rise to a communications breakdown, or a responsibility gap between the persons to whom those functions have been allocated.

### **Requirement for Irish Resident Directors**

Contrary to some reports, the Central Bank has confirmed in the Consultation that it remains of the view that Irish resident directors are important from a supervisory and accountability perspective.

Fund management companies will still be required to have at least one director who is resident in Ireland. The Central Bank is proposing to introduce a test for residence for regulatory purposes which would require that person to be present in Ireland for not less than 110 whole working days per year. This is different to the test for tax residence, and likely to be a source of submissions during the consultation.

The Central Bank is, however, proposing to relax the existing requirements for fund management companies to have at least two Irish resident directors, partially in order to expand the pool of experienced individuals available for appointment as director. The second Irish resident director may be replaced by someone who does not reside in Ireland as long as that person fulfils each of three conditions, namely he or she must:

- affirm that he or she is available to engage with Central Bank supervisors on request within any 24 hour working day period and is available to attend meetings at the Central Bank at reasonable notice;
- be unconnected to a service provider; and
- be competent in one of the six designated managerial functions.

Whether the new requirements will result in many changes in practice may well depend on the advice management companies receive about the need to ensure that they continue to be managed and controlled in Ireland for tax purposes.

## **Delegate Oversight and Rationale for Board Composition**

With regard to promoting consistency and quality of the oversight of delegates by the boards of fund management companies, the Central Bank is considering issuing documented guidance describing good practice for the monitoring and oversight of delegated tasks, setting out principles which boards should follow in the supervision of delegates and tasks which the board should retain.

The Central Bank is also proposing to introduce a new requirement for fund management companies to document how the board's composition provides the board with sufficient expertise to conduct its tasks. This is intended to ensure that fund management companies pay sufficient attention to ensuring a balance of appropriate skills and competencies on their boards, and it is envisaged that this requirement will be introduced as part of the fund authorisation process.

## **Resourcing**

With respect to the resourcing of fund management companies, it may be noted that the Central Bank is already monitoring resource levels available to management companies through, inter alia, the authorisation review process; full risk assessment of firms; and thematic reviews. Based on the outcome of this engagement, the Central Bank may issue further guidance or rules.

## **Specific Questions Raised in the Consultation by the Central Bank**

While the Central Bank is consulting on the whole of the fund management company governance package, it is specifically seeking stakeholders' views on the following question sets in particular:

- Is publishing a delegate oversight good practice document along the lines of the document attached in Appendix 1 of the Consultation a good approach to encouraging the development of the supervision of delegates by fund management companies?
- Is the breakdown of revised managerial functions correct? Should other managerial functions be provided for? What might the operational effectiveness function entail and how might this be performed? Are there any obstacles to the Chairperson performing the operational effectiveness function?
- Is relaxing the two Irish resident director requirement the correct approach? Will relaxing the requirement have an adverse impact on the Central Bank's ability to have issues with distressed investment funds resolved? If so, how could this be addressed?
- What are your views on the proposed approach to measuring time spent in Ireland? Are there any alternatives or any enhancements to the definition proposed by the Central Bank?
- Is there a downside to requiring fund management companies to document the rationale for the board composition? Will fund management companies require a transitional period during which they can alter their board composition to ensure they have sufficient expertise and what would be a reasonable timeframe for such adjustments?
- Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?

## **Comment and Next Steps**

The Central Bank is seeking stakeholders' comments on its Consultation by 12 December 2014. The partners at Matheson intend to respond to the Consultation, and we would be delighted to speak with you should you have any queries in relation to the proposals, or to discuss your viewpoint regarding any aspect of the Consultation.

Should you have any enquiries generally regarding the Irish legal regulatory requirements applicable to fund management companies, or in relation to investment funds, please get in touch with us.

The Consultation can be accessed [here](#)

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If you require detailed advice relating to fund management company effectiveness, please get in touch with your usual Asset Management and Investment Funds Group contact who would be delighted to assist you.

*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](http://www.matheson.com).*

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