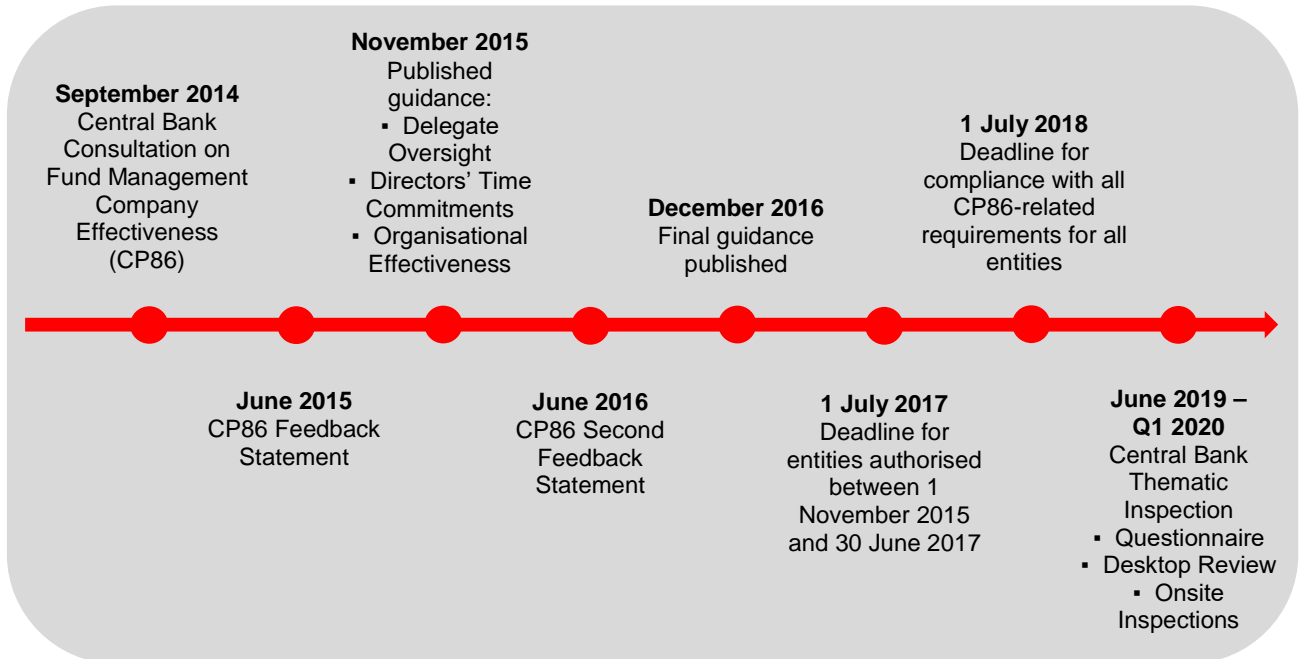


CP86 and Irish Management Companies 20 November 2019

CP86 Highlights

The rules and guidance resulting from the Central Bank of Ireland (“**Central Bank**”) consultation on Fund Management Company Effectiveness (“**CP86**”) aim to enhance investor protection by outlining requirements regarding the governance and effectiveness of fund management companies (“**FMCs**”). The Central Bank’s guidance addresses delegate oversight, directors’ time commitments, organisational effectiveness, managerial functions, operational issues and procedural matters.

Timeline



Streamlining of Managerial Functions

15 AIFM Functions

9 UCITS ManCo Functions



New Managerial Functions

1. Investment management
2. Fund risk management
3. Operational risk management
4. Distribution
5. Regulatory Compliance
6. Capital and Financial Management

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.

Mapping of Regulatory Obligations

The Central Bank's Guidance for Fund Management Companies requires FMCs to review the regulatory obligations placed on them and to identify precisely under which managerial function each regulatory obligation falls. The FMC's policies and procedures should document how the FMC has mapped its regulatory obligations against those of its delegates.

Delegate Oversight

CP86 includes Delegate Oversight Guidance which focuses on the role of boards where significant tasks are delegated externally and describes good practice in the supervision of delegates and the monitoring and oversight of delegated tasks, and sets out principles which boards should follow regarding the tasks which are delegated and which should be retained. Specific guidelines on the supervision of delegates in relation to investment management, distribution, risk management and investment operations and administration are included. The Delegate Oversight Guidance also considers support and resourcing and matters to be considered by boards of externally managed investment companies.

The Central Bank's June 2019 questionnaire to FMCs, which initiated its thematic review on the implementation of the rules on guidance for FMCs, raised questions regarding the frequency of on-site visits to third party service providers, due diligence and reliance on delegates' policies and procedures.

The Central Bank's letters to relevant FMCs requesting documentation in August 2019 requested extracts of board minutes evidencing the discussion and approval of the launch of funds and sub-funds, indicating that the Central Bank will look for robust discussion and challenge by the board regarding the approval of funds.

Rationale for Board Composition

FMCs are required to document the rationale for board composition in the business plan / programme of activity. The intention behind this requirement is to drive FMCs to have boards which operate to the highest standards by ensuring the quality of the board in terms of the mix of experience and skill sets.

Directors and Designated Persons

Time Commitments

The guidance on directors' time commitments states that high numbers of directorships combined with high aggregate levels of professional time commitments will be regarded as a risk indicator by the Central Bank. Additional supervisory attention will apply under the Central Bank's risk-based approach to supervision where a risk indicator is triggered. The risk indicator is formulated in the Guidance Paper as "a joint test of (a) having more than 20 directorships and (b) having an aggregate

professional time commitment in excess of 2000 hours” per year. For further information on directors’ time commitments, see our **briefing note**.

Location Rule

CP86 introduced flexibility regarding the appointment of designated persons as there is now no requirement to have an Irish designated person. The location rule allows for the appointment of a designated person outside Ireland, provided that an FMC with a PRISM impact rating of “Low” (most FMCs would have a low PRISM impact rating) has: (a) at least two Irish resident directors; (b) at least 50% of its directors in the EEA; and (c) at least two designated persons resident in the EEA. However, some of this flexibility regarding the appointment of designated persons has been overtaken by subsequent developments in the context of Brexit, including the European Securities and Markets Authority (“ESMA”) July 2017 sectoral specific **opinion** to support supervisory convergence in the area of investment management. As a result of the approach taken in that ESMA opinion and discussions within the ESMA Supervisory Coordination Network, the Central Bank has typically sought greater substance in terms of the number of employees in Ireland and increased designated person time commitments in authorisations of new management companies.

Organisational Effectiveness Role

The purpose of this role is to ensure that there is an independent director within the FMC who has the specific task of keeping the effectiveness of the organisational arrangements of the company under ongoing review, with his or her reports being submitted to the board for discussion and decision. The organisational effectiveness role does not constitute a managerial function. The Central Bank stated in its June 2015 CP86 Feedback Statement that the independent director with responsibility for the organisational effectiveness role should not perform any of the six managerial functions.

Retrievability of Records Rule

FMCs 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. In this context, the Central Bank has stated that “immediately” means documentation requested before 1pm (Irish time) should be provided to the Central Bank on the same day and documentation requested after 1pm (Irish time) should be provided to the Central Bank before 12 noon on the following day on which the Central Bank is open for business.

Monitored Email Address

In order to improve the responsiveness of FMCs to information requests from the Central Bank, the Central Bank introduced guidance in relation to setting up a dedicated and monitored email address which must be maintained by FMCs. 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 FMC manages provided that it is monitored on a constant basis (ie, daily).

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

Full details of the Asset Management and Investment Funds Department, 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.

Contacts



Tara Doyle

PARTNER

T +353 1 232 2221
E tara.doyle@matheson.com



Michael Jackson

MANAGING PARTNER

T +353 1 232 2000
E michael.jackson@matheson.com



Dailta Counihan

PARTNER

T +353 1 232 2451
E dailta.counihan@matheson.com



Anne-Marie Bohan

PARTNER

T +353 1 232 2212
E anne-marie.bohan@matheson.com



Shay Lydon

PARTNER

T +353 1 232 2735
E shay.lydon@matheson.com



Liam Collins

PARTNER

T +353 1 232 2195
E liam.collins@matheson.com



Philip Lovegrove

PARTNER

T +353 1 232 2538
E philip.lovegrove@matheson.com



Elizabeth Grace

PARTNER

T +353 1 232 2104
E elizabeth.grace@matheson.com



Oisín McClenaghan

PARTNER

T +353 1 232 2227
E oisín.mcclenaghan@matheson.com



Michelle Ridge

PARTNER

T +353 1 232 2758
E michelle.ridge@matheson.com



Barry O'Connor

PARTNER

T +353 1 232 2488
E barry.oconnor@matheson.com



Donal O'Byrne

PARTNER

T +353 1 232 2057
E donal.o'byrne@matheson.com



Brónagh Maher

PROFESSIONAL SUPPORT LAWYER

T +353 1 232 3757
E bronagh.maher@matheson.com