



BRIDGE
CONSULTING

CP86 – Commentary on CBI
Further Consultation – 2nd June
2016

CP86 – Key Takeaways from the Central Bank's Third Consultation on Fund Management Company Effectiveness

On 2nd June 2016 the Central Bank of Ireland issued its third Consultation Paper on Fund Management Company Effectiveness – Managerial Functions, Operational Issues and Procedural Matters. Outlined below are what Bridge Consulting believes to be the key considerations of the Consultation. The full paper can be found at the following link.

http://www.centralbank.ie/regulation/marketsupdate/Documents/160602_CONSULTATION%20PAPER%20-%20CP86_THIRD%20CONSUL_FINAL%20VERSION.pdf

Implementation Timeline:

Consultation Period – the consultation period is approximately 3 months with the closing date for the submission of responses being 25th August 2016.

Transitional Period – the transitional period for adoption and implementation by existing funds and management companies has been increased from 6 months to 12 months following the completion of the consultation process and the issuance of final rules and guidance.

Key Points:

The paper is structured in three sections plus an Appendix containing Draft Guidance:

Part I – Governance: this section discusses work already done in the previous CP86 papers, including:

- The reduction and streamlining of the 15 AIFM and 9 UCITS management functions to 6 management functions.
- The publication of the Central Bank's delegate oversight guidance and Directors time commitment guidance.
- The publication of the Organisational Effectiveness (“OE”) Guidance. The Central Bank also clarifies that the OE role should not detract from the main purpose of the Director responsible and that responsibility of the Director undertaking the role is not impeded if he/she is provided with a template for conducting reviews or is otherwise supported in conducting reviews.

Part II – Compliance: this section outlines the Central Bank's proposed approach to Compliance and invites a consultation on those views. This section particularly concentrates on the role of the Designated Person, outlining the Central Bank's view that:

- The Designated Persons are the fund management company's line of management that lies between the directors and the delegates.
- Fund management companies should ensure that Designated Persons monitor and oversee the approaches and strategies approved by the board which corresponds to their managerial function.
- Reporting should include summary information on the activity of each sub-fund. Reporting should not be on an exceptions basis.
- Designated Persons have the necessary capacity in terms of experience and time availability.

- Designated Persons should be at a sufficient level of seniority such that they are the appropriate individuals to meet with the Central Bank as part of the Central Bank's supervisory engagement process.
- Fund management companies are guided to document in their contractual arrangements the service providers responsible for the tasks undertaken.
- Fund management companies are guided not to rely on the policies and procedures of their delegates or group without considering whether or not these are deemed appropriate.

Part III – Supervisability: this section outlines the Central Bank's proposed approach to Supervisability and invites a consultation on those views. It is particularly concerned with the Central Bank's ability to supervise in relation to its access to a fund management company's records, directors and designated persons. The Central Bank has proposed a number of new rules to help it maintain clear and effective communication with fund management companies.

- Location Rule:
 - A fund management company rated Medium Low or above under PRISM is required to have:
 - i. At least 3 Irish resident directors or at least 2 Irish resident directors and one designated person based in Ireland; and
 - ii. At least two thirds of its directors in the EEA; and
 - iii. At least two thirds of designated persons in the EEA
 - A fund management company rated Low under PRISM is required to have:
 - i. At least 2 Irish resident directors; and
 - ii. At least two thirds of its directors in the EEA; and
 - iii. At least two thirds of designated persons in the EEA
- Retrievability of Records Rule:
 - The fund management company will be required to keep all records in a way that makes them immediately retrievable in or from Ireland
 - When the Central Bank meets representatives of a fund management company in Ireland and asks them to produce a record of the fund, they are able to produce the record immediately
- Monitored Email Address Guidance:
 - Fund management companies should maintain a dedicated and monitored email address for the purpose of providing the Central Bank with a contact for any supervisory communication.

Appendix 1 – Part 2 of the Fund Management Companies Guidance – this section contains Parts IV, V and VI of the draft guidance (see below). Parts I – III were previously issued in guidance released last November.

- Part I – Delegate Oversight
- Part II – Organisational Effectiveness
- Part II – Directors Time Commitments
- Part IV – Management Functions
- Part V – Operational Issues
- Part VI – Procedural Matters

We will release separately a more detailed analysis paper on the Draft Guidance and its implications, but a brief summary of the key points are as follows:

Part IV – Management Function

The draft guidance proposed in detail the responsibilities of the Designated Person under each of the 6 management functions. It also further clarifies that the Designated Persons are responsible for managing the fund on a 'day-to-day' basis. The Central Bank notes that without Designated Persons then no-one within the fund would be responsible for the day-to-day management and this may be construed as a letterbox entity within the meaning of the relevant legislation.

The draft guidance notes that Designated Persons can be employees of the fund management company, or be seconded from another firm such as the investment manager or a firm which specializes in the provision of Designated Persons, but that the Designated Person **must** put the best interest of investors ahead of any other interests.

Part V – Operational Issues

Part V of the guidance notes outlines the importance of retention, archiving and retrievability for all relevant documentation and records (Fund Management Company and Investment Funds) as part of the Central Bank's minimum expectations. An illustrative list of relevant documents is also provided and minimum expectations expanded upon.

The purpose and maintenance of a designated email address is also outlined in greater detail i.e. to facilitate effective and efficient communication between the Central Bank of Ireland and fund management companies.

Part VI – Procedural Matters

The draft guidance covers the process around Applications for Authorisation including detail to be submitted in the Application Forms and Business Plans. It also provides detail on relationships with the Central Bank and on the Fund Management Passport.

Implementation Options for Fund Boards

Fund Management Boards which allocate Management Functions to certain Directors have a number of options in relation to how they implement the changes stemming from the conclusion of the CP86 process:

Option 1: A Fund can delegate all or some of the CBI's Management Functions to seconded individuals from another firm such as the Investment Manager or a firm which specialises in the provision of Designated Individual services.

Option 2: A Fund can appoint an independent UCITS or AIF Management Company which will be responsible for performing the Managerial Function duties and will report to the Board of the Fund.

Option 3: Identify and agree with individual Director's the additional time commitment they will be required to make in order to continue assuming day-to-day responsibility for the Management Functions currently assigned to them. Create a separate letter of appointment covering this aspect of the Director's role which identifies the separate time commitment, job specification and fee arrangements.

How Bridge Can Help

Bridge Consulting ("Bridge") is a Dublin based compliance consulting firm which specialises in the provision of Designated Individuals and related services to Irish domiciled Fund Structures. The Bridge team currently acts as Designated Individuals for over 60 UCITS and AIFMD fund companies.

1. Bridge can provide two or more highly experienced Designated Individuals to assume responsibility for some or all of the Managerial Function roles. Including providing support to the independent Director in the implementation of the Organisational Effectiveness role.
2. Bridge does not permit its staff members to act as Directors for fund companies. The Bridge service is a truly independent Designated Individual solution which provides support to fund boards and avoids the obvious conflicts created by the provision of fund Directors.

For more information on how bridge can help, please contact:

Simon McDowell

simon.mcdowell@BridgeConsulting.ie

+353 86 020 3561

Patrick Robinson

Patrick.robinson@bridgeconsulting.ie

+353 1 673 1880