



FINANCIAL SERVICES

Central Bank Finalises Guidance and Rules for Fund Management Companies

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On 19 December 2016, the Central Bank of Ireland published the final [guidance](#) (the **Guidance**) for fund management companies on managerial functions, operational issues and procedural matters.

The Central Bank also published a [feedback statement](#) on Consultation Paper 86 (CP86), third consultation, (the **Feedback Statement**) which outlines the rationale for the final position taken on certain matters in the Guidance and which also includes new rules for fund management companies on the effective supervision requirement and on the retrievability of records.

The finalised Guidance represents three years of policy work performed by the Central Bank, three rounds of consultation on the Guidance and ongoing in depth engagement with the funds industry throughout the whole process. Plenty more work lies ahead however. Over the next 18 months fund management companies must focus their efforts on updating and streamlining their operations in order to ensure compliance with the new rules and Guidance as they apply to their particular business model.

The Guidance and rules in the Feedback Statement apply to all Irish fund management companies including UCITS management companies, AIFMs, self-managed UCITS and internally managed AIFs. To the extent that a fund management company diverges from the Guidance, it will not be a regulatory breach. However, the Central Bank has indicated that it will refer to the Guidance when forming a view as to whether a fund management company has complied with its regulatory obligations.

Set out below is a summary of the new rules and key points in the Guidance.

Final rule on EEA location rules / effective supervision requirement

The proposed EEA location rule was regarded by industry as one of the more controversial aspects of the third CP86 consultation. Its proposed introduction was met with widespread opposition as evidenced in the large volume of industry responses to the consultation.

Significantly, the Central Bank has relaxed its original proposed approach which was to require management companies and self-managed funds to have at least two thirds of their directors based in the EEA. Fund management companies have welcomed the fact that the new location rules, as outlined below, provide more flexibility on the location of directors and designated persons than the Central Bank had previously proposed.

The location rule is summarised as follows:

Where a management company has a PRISM impact rating of Medium Low or above, the management company shall have at least:

- three directors resident in the State or, at least two directors resident in the State and one designated

- person resident in the State,
- half of its directors resident in the EEA, and
- half of its managerial functions performed by at least two designated persons resident in the EEA,
or

Where a management company has a PRISM impact rating of Low, the management company shall have at least:

- two directors resident in the State,
- half of its directors resident in the EEA, and
- half of its managerial functions performed by at least two designated persons resident in the EEA.

It should be noted that most self-managed UCITS or internally managed AIFs will have a PRISM rating of low.

Designated Persons in the same Group

In addition to the EEA location rules outlined above, the third CP86 consultation proposed that where designated persons are not working in the same location, they must be employed by the same group of companies and must be able to coordinate their roles effectively. Following significant resistance from industry, this requirement has been removed from the Guidance.

Final Rule on Retrievability of Records

The Feedback Statement provides that “a management company shall keep all of its records in a way that makes them immediately retrievable in or from the State.” The Guidance clarifies that in the context on this rule, the Central Bank is of the view 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.

Organisational Effectiveness Role

Fund management companies are required to have one director who carries out an Organisational Effectiveness role to ensure that the fund management company continues to be organised and resourced in the most appropriate manner on an on-going basis. The third CP86 consultation paper included internal audit tasks as part of the Organisational Effectiveness role. In light of the divergent views expressed by respondents, the Central Bank has decided not to change this position. The Guidance states, however, that the precise allocation of regulatory obligations amongst managerial functions is a matter for each management company and it may be that, for any particular company, the particular regulatory obligations should be attributed differently.

Next steps for Fund Management Companies

- Fund management companies will need to take the necessary steps to adjust their operating model to streamline their managerial functions and to assign key managerial functions to appropriate designated persons.
- Fund management companies will need to adjust their board composition and/or the identity of designated persons to comply with the EEA location rules referred to above.
- Fund management companies will need to update their business plans/programmes of activity to address the recommendations of the Guidance and reflect the six key managerial functions.
- Fund management companies will need to appoint an appropriate person to fulfil the Organisational Effectiveness role.
- Fund management companies will need to ensure that they have the necessary procedures in place to comply with the retrievability of records requirements and to ensure that they maintain a dedicated and monitored email address.

Transitional Arrangements and Timing

- Existing fund management companies must ensure that they are operating in compliance with all of

the steps outlined above by 1 July 2018.

- For new fund management companies, applications made to the Central Bank after 1 July 2017 must evidence full compliance with all of the above requirements.
- The new rules in the Feedback Statement (streamlining of managerial functions, organisational effectiveness role, retrievability of records rule and effective supervision requirement) will be included in the amended Central Bank UCITS Regulations (1) and in the forthcoming Central Bank AIF Regulations (2), as appropriate. Details of the transitional arrangements applicable to the new rules and the Guidance are set out in the Central Bank's UCITS and AIFMD Q&A documents which were both updated on 19 December 2016.

While there is a lengthy transitional period for existing fund management companies, such management companies would be well advised to begin their preparation to implement the new rules and Guidance given the volume of work involved. This was the message echoed by Gerry Cross, Director of Policy and Risk at the Central Bank, when he spoke at the industry briefing on CP86 hosted by Irish Funds on 13 January 2017.

1. Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No. 2) Regulations 2017

2. Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Alternative Investment Fund) Regulations 2017

About the Author