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# Central Bank of Ireland publishes its findings on compliance with Fund Management Company Guidance (CP86)

by

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**23rd October 2020** | by

On 20 October 2020, the Central Bank of Ireland (CBI) published a letter to the Chairs of all Fund Management Companies (FMCs), which include UCITS management companies, alternative investment fund managers and self-managed or internally?managed UCITS and AIFs. The letter sets out the CBI's findings from its review into how FMCs have implemented standards in relation to governance, resourcing, management and control that were introduced in 2017.

The CBI found that FMCs that have been authorised since the framework was implemented were largely compliant. However, a significant number of FMCs that were authorised prior to 2017 framework have not yet fully implemented the required framework and material divergences from the guidance exist. In particular, the CBI is concerned with resourcing levels, an over-reliance on group entities and/or delegates and the performance of the director for organisational effectiveness.

## Required Action

The CBI expects all FMCs to take immediate action to critically assess their operational, resourcing and governance frameworks and identify the steps necessary to ensure that they meet the required standards and guidance.

Such assessment should take into account the CBI's published findings from the review, which are summarised below.

The CBI letter should be discussed and considered by FMC Boards at their next meeting. Further, the above analysis and a timetable for implementing necessary changes must be approved by all relevant Boards by the end of Q1 2021.

## High-level findings

A high-level summary of the CBI's findings is set out below.

**Resourcing:**

- A minimum of three full-time employees or equivalent is expected for all FMCs. The CBI states that this is the minimum standard applicable to the smallest and simplest of entities.
- FMCs must appoint locally based persons to managerial functions (Designated Persons) and other staff with sufficient time dedicated to their roles in order to fulfil their duties.
- The CBI is concerned with co-mingling of support staff across the investment management and risk

management functions.

**Designated Persons:**

- Designated Persons roles are expected to be full-time roles in larger firms.
- Designated Persons are expected to constructively challenge other FMC staff and delegates and the information that is provided by those persons. A key finding of the CBI included a poor quality of delegate reporting, compounded by an insufficient review of these delegate reports by the appropriate designated person.
- Board reporting should include evidence of challenges by the Designated Person being mage and a demonstration of the value that Designated Person brings to the FMC.

**Delegate Oversight:**

- All delegate arrangements must have documented Service Level Agreements in place.
- Due diligence must be carried out on delegates, including investment managers, in advance of any appointment and annually thereafter.
- If an FMC relies on a delegate’s policy or procedure, the CBI also expects that the FMC has a formalised process for reviewing these policies and procedures as part of the initial and ongoing due diligence process.

**Risk Management Frameworks:**

- All FMCs are required to have a Board-approved, entity-specific risk management framework which must include a risk register and/or a risk appetite statement.
- The Board must review the risk management framework at least annually.

**Board approval of new funds:**

- New funds and sub-funds should be considered by the FMC Board early in the process rather than just prior to launch and submission of the application to the CBI. The CBI expects evidence of robust discussion and challenge by the FMC in relation to any new fund strategies and the risks involved.

**Organisational Effectiveness:**

- The director for organisational effectiveness (OE) should make proposals to the Board to improve the effectiveness of the FMC.
- The CBI highlighted a lack of evidence of meetings between the director for OE and the Designated Persons which should occur at least quarterly or as necessary.
- In particular, the CBI is concerned with the lack of Board reporting and monitoring by the director for OE in relation to resourcing, conflicts of interest and personal transactions. Any reports to the Board should include detail on how conclusions were reached, rather than just stating the relevant conclusion.

**Governance and Culture:**

- The CBI expects that all but the smallest of FMCs should have a CEO, despite the fact that only around 20% of FMCs currently have a CEO in place.
- The CBI also highlighted that 28% of FMCs have at least one independent director with more than ten years’ tenure. The CBI queried the ongoing independence of such directors and recommends that tenure is considered as part of the annual review of Board composition.
- In addition, the CBI noted that only 16% of director roles are held by women and suggested that gender diversity should be considered as part of the governance review.
- The CBI also found that Board minutes of meeting are generally insufficiently detailed to capture discussions and challenges at a Board level.
- A Board-specific terms of reference should be adopted by FMCs.
- A formally documented succession plan should also be in place.

## How can LK Shields help?

Our team is available to assist FMCs with both the required assessment and gap analysis as well as the implementation of any appropriate changes.

Please contact a member of the financial services team if you would like any further information.

## About the Authors