



FINANCIAL SERVICES

Irish Central Bank rules and guidance for Management Companies passporting into Ireland

by

Irish Central Bank rules and guidance for Management Companies passporting into Ireland

29th March 2017 | by

The Central Bank of Ireland (Central Bank) published its Feedback Statement and final guidance on its third round of consultation on fund management company effectiveness (CP 86) on 19 December 2016.

Interestingly, CP86 has an entire section for managers of Undertakings for Collective Investments in Transferable Securities and Alternative Investment Fund Managers (AIFMs) (together Management Companies) organised and authorised in EU member states other than Ireland, or an AIFM established outside the EU.

With Brexit on the horizon there seems to be an increase in the flow of Management Companies seeking to passport into Ireland to externally manage Irish domiciled funds (Funds). With regulatory oversight of these Funds and Management Companies falling to two different regulators, a key concern for the Central Bank is that the funds are subject to proper regulatory oversight.

Section F of CP86 focuses on the responsibility of the board of directors (Directors) of externally managed Funds. The Central Bank has set out guidance on the responsibilities for Directors and the Management Companies.

1. The Management Company is responsible for ensuring that it and its Funds under management comply with regulatory obligations. The Directors of an externally-managed Fund should ensure that they support the ability of the Management Company to comply with all of its regulatory obligations. While satisfying themselves that the delegation to the Management Company is working effectively for investors.
2. Funds are not regulated as Management Companies. Nevertheless, the Directors of the Fund retain ultimate responsibility for its management, including the appointment and oversight of the Management Company, which is its principal delegate.
3. There is no 'one size fits all approach' in CP86. The relationship between a Fund and the Management Company may be structured in a number of different ways, depending on their particular circumstances.
4. The Directors of the Fund retain responsibility for issuing the prospectus, but in doing so, they expect to receive information about the investment approach of the Management Company. The Board retains responsibility for publishing audited financial statements -- a responsibility shared with the Management Company in the case of an investment company authorised as an AIF.
5. The Directors of the Fund should satisfy themselves that their relationship with the Management Company is such that the Directors' responsibilities are discharged, and that the Management Company

performs the relevant tasks it is required to undertake to an appropriate standard. They should receive and be satisfied with regular and appropriately detailed reports from a senior representative of the Management Company in this regard. They should further consider and identify any conflicts of interest that may arise and should satisfy themselves that such conflicts are being appropriately managed. In general, the Board should hold the Management Company to the same standards of accountability as that which a fund management company should require of its delegates. It should also receive and be satisfied with regular, direct reports from the depositary. It does not, however, need to replicate the detailed oversight of delegates by the Management Company.

6. The Directors of the Fund should expect to receive and be satisfied with regular reports from the Management Company relating to the areas below.

- Its performance (whether directly or through delegates) of the investment management tasks outlined in section A, "investment management", of CP86.
- Significant developments in the distribution of the investment fund, including any significant legal, regulatory, tax or other compliance issues.
- Its performance (whether directly or delegated) of the risk management tasks outlined in section C, "risk management (both operational and investment risk)", of CP86.
- Its performance (whether directly or delegated) of the operational and administrative tasks outlined in section D, "support and resourcing", of CP86.
- The extent of its delegation of any of the tasks and its control framework for oversight of its delegates' performance.

7. The Directors should also consider whether they should, in addition to reports from the Management Company, require periodic direct reports from (including, if appropriate, attendance at board meetings) by the delegates of the Management Company.

8. A Management Company may include reports received from its delegates in its reports to the Directors of the Fund. However, a Management Company's report should not consist solely of the transmission of reports received from its delegates. The Management Company's report should include commentary from the Management Company on how it has performed its role.

9. Some AIFs constituted as investment companies, unit trusts or common contractual funds may have management companies which are not themselves authorised as AIFMs and which may appoint external AIFMs. These AIF "management companies" are not regulated as AIFMs but retain responsibility for the AIFs under management and the oversight of the AIFM. The board of the AIF management company also retains responsibility for issuing the prospectus (unless the AIF is itself an investment company) and for publishing audited financial statements (unless the AIF is itself an investment company), the latter responsibility being shared with the AIFM. In such cases, the board of the AIF "management company" should apply the same approach to the oversight of the AIFM as described above in the case of an externally managed AIF.

10. For avoidance of doubt, the above guidance is limited to externally-managed Funds and to AIF management companies with external AIFMs, and does not apply to other forms of investment funds or fund management companies.

Respondents have noted in their Feedback Statement to CP86 that the landscape of the European Economic Area has changed in the wake of the UK's Brexit vote and that Brexit will exacerbate the difficulties in implementing effective supervision of Funds by Management Companies.

For further information, please contact Trevor Dolan, Partner at tdolan@lkshields.ie.

About the Author