

## **Managerial Functions and the Role of the Designated Person in Ireland**

**Introduction** The below paper outlines the Managerial Functions that Irish authorised fund management companies must adhere to regarding the management of Irish UCITS and AIFs and an overview of the role of the Designated Person (“DP”). **Regulatory Background** On

19<sup>th</sup> December 2016, the Central Bank of Ireland (“Central Bank”) published its Feedback Statement on the third consultation of CP86. This process commenced in September 2014 and this feedback statement finalises the Central Bank’s position regarding their expectations of the arrangements to be in place. The consultation consolidates the numerous papers issued by the Central Bank examining Governance, Compliance and Effective Supervision for fund boards. The guidance applies to Irish authorised fund management companies (UCITS Management Companies, AIFMs, Self-Managed UCITS and Internally Managed AIFs). **Key Points Regarding the Guidance** Managerial Functions

The Central Bank have outlined six managerial functions to be carried out by DPs. They are as follows:

- Regulatory Compliance
- Operational Risk Management
- Capital and Financial Management
- Fund Risk Management
- Investment Management
- Distribution

These managerial functions consolidate the previous 10 UCITS and 16 AIF functions. Despite the reduction in the number of managerial functions, the responsibility of DPs has increased.

**Risk Management** represents two of the six functions, highlighting the importance and level of focus given to it by the Central Bank. It is clear that Risk Management expertise is needed in order to fulfil governance requirements. It is imperative that risks are identified, monitored and managed accurately and efficiently. FundRock Management Company have developed a dedicated Risk Management team with expert risk professionals that utilise best in breed technology software (including MSCI RiskMetrics) to independently calculate Global Exposure (VaR & Commitment), calculate SRRI, monitor liquidity and calculate leverage for funds under management. This facilitates the delivery of best in class risk management solutions and

reporting to UCITS and AIF fund boards to fulfil the Central Bank's requirements.

**Distribution** was previously not one of the ten or sixteen managerial functions outlined by the Central Bank. This highlights the focus the Central Bank is placing on distribution and it is imperative that the DP ensures that where funds are registered, marketed and sold in various jurisdictions, that it is done so by complying with relevant local laws and regulations in each jurisdiction. FundRock have a long history in providing distribution oversight and support to funds throughout Europe having established an independent management company in 2004. Our oversight team of more than thirty people performs oversight and due diligence on a daily basis, keeping fund boards informed of findings and proactively resolving issues identified. Our dedicated distribution specialists are constantly working on the development of value added distribution solutions. This includes, the constant monitoring of regulatory changes utilising our global network of local experts, assisting with fund registrations throughout the world and completing due diligence on global distributors and sub distributors. We believe that this is the standard that is expected from the Central Bank with regard to distribution oversight in order to fulfil fund management company's regulatory obligations. **Regulatory Compliance** is a key managerial function where the DP is responsible for ensuring that the required policies, procedures, internal organisation, systems and controls are in place in order to comply with the relevant legislation and regulations. The DP is also responsible for providing relevant reporting and notifications to the Central Bank, fund board and fund shareholders on an ongoing and ad hoc basis. FundRock's comprehensive infrastructure and resources ensure that these requirements are adhered to. FundRock utilise best in breed compliance software to monitor fund investments on a post trade basis to ensure compliance with established guidelines, fund specific rules and UCITS / AIFMD regulations. Daily alert reporting and monthly and quarterly fund reporting enable FundRock to notify fund boards of the status of key compliance risks and activities such as diversification limits, cash monitoring, prospectus restrictions, counterparty risk and asset eligibility. **Rules Regarding the Location of Directors and Designed Persons** Fund Management Companies which have a PRISM\* impact rating of "Medium Low" or above are required to have at least:

- Three Irish resident directors or at least two Irish resident directors and one DP based in

Ireland;

- Half of its directors in the EEA; and
- Half of its managerial functions performed by at least two DPs resident in the EEA

Fund Management Companies which have a PRISM impact rating of “Low” are required to have at least:

- Two Irish resident directors;
- Half of its directors in the EEA; and
- Half of its managerial functions performed by at least two DPs resident in the EEA

\*Note, the majority of fund management companies have a “Low” prism rating. Ratings are determined by assets under management; the level of risk regarding fund investments, number of sub funds, service providers. **The Role of the Designated Person** For each managerial function, the fund management company must assign responsibility to a DP. The DP role differs to that of a director insofar as the role of the DP is carried out on a “day-to-day” basis. This however does not necessarily mean that activities such as reporting and delegate supervision needs to be carried out on a daily basis. The DP role is a pre-approved control function (PCF) under the Central Bank’s fitness and probity regime. CP86 guidance allows for the first time, DPs, who are not fund directors, to be appointed from outside of Ireland, subject to the restrictions outlined above. At least half of a management company’s DPs should be located within the EEA (the EUs current 28 member states plus Norway, Iceland and Liechtenstein). DPs are responsible for the activities carried out with respect to their managerial functions. As many tasks associated with managerial functions are outsourced by the fund management company (e.g. to the Investment Manager, Global Distributor or Fund Administrator etc.), the role of the DP, in such cases, is one of monitoring and oversight. The DP is responsible for meeting the obligations to the fund board of directors. This includes regular reporting on findings, escalation of issues and ensuring compliance with strategies, policies and directions issued by the board. The DP is responsible for overseeing compliance with regulatory obligations and is also responsible for compliance with the Central Banks Fitness and Probity regime. The Central Bank allows for a director to carry out a DP role, however requires two letters of appointment for both roles. The recently

introduced Organisational Effectiveness role, which is fulfilled by an independent director who does not act as DP for any of the six managerial functions, has led to certain executive-type roles being carried out by non-executive directors. An example of this, is the oversight of Internal Audit which falls within the Organisational Effectiveness role. The below sets out the characteristics that a DP should possess:

- **Experience** – DPs should have experience and expertise in the managerial function(s) they are managing and be able to satisfy the Central Bank as to their capability.
- **Knowledge:** DPs should have sufficient knowledge of funds under management and of the area they are managing, to: (a) interrogate the information being provided to them and constructively challenge their employees or delegates; (b) address queries raised by the board of directors or the Central Bank, in a manner which demonstrates reasonable knowledge of the operations of the fund / management company and any issues affecting them; and (c) keep up-to-date on latest developments in order to perform their role effectively. The DP should have a detailed understanding of Irish regulations and be able to engage with the Central Bank where applicable.
- **Authority:** DPs should be sufficiently senior in their role such that their challenge of delegates carries weight and authority and they are the appropriate individuals to meet with the Central Bank as part of their supervisory process.
- **Time:** DPs should have enough time available to them to carry out their roles thoroughly and to a high standard.
- **Fitness & Probity:** DPs should meet the Central Bank's Fitness and Probity requirements, and be approved by the Central Bank to carry out the role.

**Concluding Remarks** Governance, Compliance and Supervisibility are the three core principles highlighted by the Central Bank regarding management company effectiveness. To demonstrate effectiveness, the Central Bank have advised that board meeting minutes should be thorough enough to demonstrate compliance with these principles. A framework should be in place to ensure DPs and directors are held accountable and can demonstrate compliance. The increased Central Bank scrutiny and day to day operational requirements on DPs has led to an increase in fund boards appointing external third party management companies to act as UCITS Manager, AIFM and DPs for managerial functions. Third party

management companies provide fund boards with an additional robust layer of governance, independent oversight and reporting and expertise in specialised areas such as risk management, regulatory compliance and delegate oversight. Some of these requirements are relatively new to the Irish regulations however FundRock have the expertise and experience having developed processes and controls over many years e.g. distribution oversight. FundRock have a long clean regulatory track record in protecting client brands and providing best in class governance solutions. Significant investment has been made to develop robust solutions and platforms. Investment continues to be made in leading RegTech solutions to facilitate robust record keeping, secure monitored email, strong MIS and KPI reporting, delivering meaningful information to boards and DPs in an efficient and effective manner. Please feel free to revert to your regular FundRock point of contact if you require any more information on this topic. **Your FundRock Team** [wprm\_package id='7411']