

Group Briefing

December 2015

Organisational Effectiveness: Role of the Independent Director

BACKGROUND

The Central Bank recently issued the document “Fund Management Companies - Guidance” (“Guidance”) which applies to any Irish fund management company or self-managed investment company (each, a “fund company”). The Guidance describes the way in which the Central Bank considers a fund company should manage the various tasks it delegates to the administrator, investment manager, risk manager and distributor. One of the requirements in the Guidance relates to the need for a fund company to appoint an independent director to undertake a new role which relates to the organisational effectiveness of the board. This briefing describes that new role.

PURPOSE OF THE ROLE

The purpose of the organisational effectiveness role is to ensure that an independent director is appointed by a board of a fund company with responsibility for monitoring the fund company’s organisational arrangements on an ongoing basis to ensure that they are effective. The role is intended to ensure that someone both at and in between board meetings oversees how well the organisational structure of, and decisions taken by, the fund company and the arrangements for the

supervision of its delegates are working in the interests of the investors.

REQUIREMENT FOR INDEPENDENCE

The organisational effectiveness role needs to be performed by an independent director. In addition, it may not be performed by a director who is performing any of the “designated person” functions. The role may overlap to a significant degree with the functions typically performed by the chair of the fund company. Where a fund company does not have an independent director as its chair another director, who is independent, will need to perform the organisational effectiveness role. In such case, the respective roles and responsibilities of the chair and the organisational effectiveness director should be documented. Where the chair of a fund company is an independent director the chair’s role could be expanded to include this role.

NATURE OF THE ROLE

The independent director who undertakes this task will be charged with overseeing organisational matters in such a way as to ensure that there are adequate resources within the fund company for it to operate effectively. The independent director should

assess board practices on a regular basis and advocate that new practices be adopted where necessary or desirable. The independent director will be the board member primarily responsible for initiating proposals to improve the fund company’s effectiveness and to ensure that any agreed actions are implemented. Any organisational issues may be escalated by the independent director to the board, where necessary.

The independent director will seek to ensure that there is open discussion about all aspects of the fund company’s organisational effectiveness, will encourage critical consideration of the fund company’s procedures in place and will be able to challenge mindsets. Organisational effectiveness will be a standing agenda item for discussion at the quarterly board meetings. The independent director should prepare written quarterly reports to the board on any findings and/or recommendations for the board to consider and action.

OVERSIGHT

The Guidance lists some examples of the types of matters which the independent director undertaking the organisational effectiveness role might be involved in although these are not exhaustive. They include:-

- » monitoring the adequacy of a fund company's internal resources for its day-to-day managerial roles;
- » reviewing the organisational structure of the fund company, including ensuring that decision making is carried out in accordance with board proceedings and at the appropriate level and considering whether the organisational structure remains fit for purpose;
- » overseeing the arrangements for the supervision of delegates to ensure that they are working in the interests of investors;
- » considering the conflicts of interest affecting the fund company and its

investment funds under management and initiating action, such as escalation to the board, where these are having or are likely in the near future to have an adverse impact;

- » reviewing the board composition and reporting on this to the board; and
- » organising periodic board effectiveness evaluations of the workings of the board and those responsible for the designated functions.

SUPPORT

The promoter of the fund company will need to ensure that the independent director who assumes this role has easy

access to all of the fund company's service providers (including its legal advisers, company secretary and auditors) and has sufficient resources at the independent director's disposal in order to be able to oversee the organisational effectiveness, to make recommendations to its board and to issue reports to the board.

KEY CONTACTS

If you have any queries on this briefing or require any further details on any aspect of this briefing, please do not hesitate to contact a member of our team.

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