

ASSET MANAGEMENT AND INVESTMENT FUNDS

Further implications for Irish Fund Management Companies of the COVID-19 pandemic

2 April 2020

CENTRAL BANK REPORTING

Last week the Central Bank contacted a number of Irish fund management companies and requested that they provide certain information to the Central Bank about how the COVID-19 pandemic may be affecting their operations. For most Irish fund management companies the information is to be provided to the Central Bank every Monday by 4pm, and the first report was due on Monday 30 March. However, for those Irish fund management companies with a medium low or higher PRISM rating the information may be required to be provided to the Central Bank daily.

The following information was requested by the Central Bank:

- **Business continuity:** any update and/or significant developments on business continuity arrangements;
- **Delegates:** any issues with the oversight of delegates, including whether any alternative delegates are being considered;
- **Liquidity:** whether any liquidity management tools are being considered, such as the use of a redemption gate or the temporary suspension provisions;
- **Valuation:** any material issues relating to the pricing or valuation of securities;
- **Cybersecurity:** any material issues to report in relation to emerging threats.

This request for information was made shortly after the issue by the Central Bank of a questionnaire on the use of liquidity management tools to all Irish UCITS management companies and AIFMs which had to be completed and returned to the Central Bank by Tuesday 31 March. The Central Bank is seeking to get as much real time information about how Irish funds are operating in the current COVID-19 environment in order to seek to fulfil its public mandate role of protecting the interests of investors.

The Central Bank acknowledges in its email that firms are operating in challenging times, with increased market volatility and staff working remotely as a consequence of the COVID-19 pandemic. However, the Central Bank has requested that firms engage with it at any early stage where issues may affect an Irish fund and may have the potential to impact investors.

The board of an Irish fund management company, its senior management and the designated persons should all be informed of the need to provide information to the Central Bank. All of these individuals must be communicating about how the fund is operating currently and how investors may be impacted during this difficult time.

ROLE OF DESIGNATED PERSON

The role of the designated person is

central to the proper governance of an Irish fund management company and is brought into sharp relief at this time. The Fund Management Guidance/CP86 states that the designated person is responsible for monitoring and overseeing the relevant managerial function assigned to him/her. A description of the role of the designated person is in our briefing which can be found [here](#). In short, the designated person is the link between the board of directors of an Irish fund management company and that company's delegates and other service providers. During this COVID-19 pandemic the oversight role that a designated person has assumed on a day-to-day basis is particularly more important. The designated person should ensure that the policies and procedures applicable to the Irish fund management company and its funds under management are adhered to, that the directions of the board are acted upon and also that the regulatory obligations are being complied with.

From a practical perspective some important matters that a designated person might consider in performing the role are set out below. This list is not exhaustive but it may help a designated person to focus on some key areas of concern. To the extent that a designated person is appointed to an Irish fund management company that is staffed, these issues relate to that staffed entity itself as well as the fund management company's delegates or service providers.

DESIGNATED PERSON ROLE - OPERATIONAL RISK MANAGEMENT	AREAS TO CONSIDER
Business continuity	How regularly are the service providers confirming that the BCP arrangements are working? What plans are in place for staff that may fall ill, such as, for example, portfolio managers, board members or DP's?
Outsourcing	How is the outsourcing of various functions affected by COVID-19 in certain countries, particularly non-EEA jurisdictions, for example? Has the outsourced service provider confirmed its business continuity plans are operating well?
Cybersecurity	<p>How are the service providers managing and monitoring cyber risk, particularly with staff now operating remotely? What, if any, particular issues are of concern, for example phishing emails or the security of remote working devices, such as laptops and video conference facilities?</p> <p>Note: The Central Bank issued a letter to financial services firms on the common failings it had identified in a recent thematic inspection on matters relating to cybersecurity. This letter and our briefing can be found here. The Central Bank requires that this letter be brought to the attention of senior management by 30 April 2020. If an Irish fund management company has not convened a board meeting before that date it is important that the board needs to be made aware of this communication separately and service providers should be asked to carry out a gap analysis of its cyber management against the recommendations issued by the Central Bank for the board to consider and review.</p>

DESIGNATED PERSON ROLE - FUND RISK MANAGEMENT	AREAS TO CONSIDER
Valuation/Settlement	How are valuations affected by the closure of certain markets? Is the investment manager or other valuation service provider required to provide valuations of certain securities and is it able to do so? Are securities which are traded being settled on time?
KIIDs	Have the SRRI ratings been checked given the current volatility and are updates to the KIIDs required to be filed with the Central Bank?
VaR	How is the absolute or relative VaR calculation affected by market volatility? Does the VaR model need to be recalibrated?

DESIGNATED PERSON ROLE - INVESTMENT MANAGEMENT	AREAS TO CONSIDER
Liquidity	<p>How is the liquidity of the underlying assets of the fund affected by COVID-19? Has the board been provided with regular updates on the changing nature of the liquidity profile of the fund? Have there been any significant redemptions? How will these redemptions be managed? What liquidity tools does the fund have and what action would the board need to take for these to be implemented?</p> <p>Note: Board or board committee approval will be required to implement certain liquidity management tools e.g. the redemption gate or the temporary suspension provisions.</p>
Hedging	Is the share class currency hedging affected in the current market conditions?
MIFID disclosure requirements	Have the MiFID II notifications been made by the investment manager where a fund's value has decreased in value by 10%?

DESIGNATED PERSON ROLE - REGULATORY COMPLIANCE	AREAS TO CONSIDER
Central Bank responses	Has the fund management company responded to the various requests for information from the Central Bank accurately and on a timely basis?
Designated email address	Are several individuals checking the designated email address for these communications in case the usual recipient falls ill and a Central Bank request for information is missed?
Diversification	Are the diversification limits (e.g. for UCITS the "5/10/40 rule") continuing to be complied with given the market volatility?

DESIGNATED PERSON ROLE - CAPITAL & FINANCIAL MANAGEMENT	AREAS TO CONSIDER
Financial Statements	Are the audits and preparation of the financial statements for the most recent reporting period (e.g. 31 December) progressing well with inputs being made from the usual teams? Note: This is particularly important for those funds with a 31 December year end as the financial statements require board approval and need to be filed with the Central Bank and made available to shareholders by the end of April.
Valuation	Is the valuation of securities causing any difficulties with NAV calculations generally? Have any NAV calculations been done incorrectly and/or late?

DESIGNATED PERSON ROLE - DISTRIBUTION	AREAS TO CONSIDER
Filings	Are the regular filings in the local EU jurisdictions (such as country supplements and financial statements) continuing to be made?
AML	How is the AML process being handled in the current environment given the 4MLD requirement for AML documentation to be provided upfront?
Communications	How are the distribution teams managing in the current environment? Is the communication by distributors with investors consistent and accurate?

HOW TO PERFORM THE ROLE

The designated person would ordinarily perform this role in a variety of ways, such as face-to-face meetings, telephone calls, onsite visits of delegates and other service providers and gaining access to service providers' systems to check the fund's records. With a lockdown now in place in so many countries and the risk of COVID-19 transmission, there is little or no ability for a designated person to carry out onsite visits. Much of this work will need to be carried out by the designated person remotely which in and of itself may cause practical issues. It may be difficult to schedule calls for timing reasons or to access the usual information a designated

person reviews in performing the function. It may also be a more difficult environment for a designated person to challenge any information provided.

It is important that the frequency of the monitoring and oversight that may have been carried out to date is reconsidered in the current circumstances, taking into account the nature, scale and complexity of the fund management company and the particular issues funds under management experience. The designated person needs to make clear to delegates and other service providers what information it will need and when. The designated person should prepare, and

the board should receive, written reports on a periodic basis (which may be daily or weekly) on the particular managerial function, even if the fund is continuing to operate without any constraints or issues arising other than market volatility. All senior individuals involved in a fund management company must know on a real time basis how the current circumstances are impacting the fund management company's business.

The designated person must also be able to evidence in writing that the monitoring that has been carried out in order to demonstrate compliance with his/her obligations.

ORGANISATIONAL EFFECTIVENESS

The role of the OE director in overseeing the effectiveness of the board is equally important at this time. One of the roles identified by the Central Bank for the OE director is to ensure that the supervision of delegates is working in the interests of a fund's investors. Our briefing [here](#) describes the role of the OE director.

The OE director should be in regular contact with the relevant Designated Person to ensure that the supervision of delegates is being managed appropriately. The OE director may also want to consider how any board meetings or general meetings will need to be run remotely by telephone/video conference facilities in order to ensure that the board and shareholder governance is

operating effectively. Committees of the board may need to be established to ensure decision-making can be effected in circumstances where a full board may be difficult to convene due to illness or due to the location of the directors in jurisdictions which may have potential adverse tax consequences for the fund.

KEY CONTACTS



Kevin Murphy
Partner
+353 1 920 1177
kevin.murphy@arthurcox.com



Tara O'Reilly
Partner
+353 1 920 1787
tara.oreilly@arthurcox.com



Sarah Cunniff
Partner
+353 1 920 1171
sarah.cunniff@arthurcox.com



Dara Harrington
Partner
+353 1 920 1206
dara.harrington@arthurcox.com



Cormac Commins
Partner
+353 1 920 1786
cormac.commins@arthurcox.com



Ian Dillon
Partner
+353 1 920 1788
ian.dillon@arthurcox.com



Siobhán McBean
Partner
+353 1 920 1052
siobhan.mcbean@arthurcox.com