

## Fund Management Companies - Guidance CP86

# Role of Designated Persons

### BACKGROUND AND PURPOSE

The Central Bank's consultation on fund management company effectiveness CP86 resulted in the issue of Guidance<sup>1</sup> which applies to any Irish fund management company or self-managed investment company (each, a "fund company"). One of the requirements in the Guidance relates to the need for a fund company to appoint individuals, known as designated persons, to monitor and oversee compliance by the fund company of its regulatory obligations and in particular the ongoing performance of six key managerial functions<sup>2</sup>. This document describes the role of a designated person as set out in the Guidance. Any fund company established prior to November 2015 has until **1 July 2018** to make these appointments in relation to the streamlined six key managerial functions. Any new fund company to be established must make these appointments at the time of its authorisation.

<sup>1</sup> Fund Management companies – Guidance – December 2016.

<sup>2</sup> The six managerial functions are capital and financial management, operational risk management, fund risk management, investment management, distribution and regulatory compliance.

### WHO CAN BE A DESIGNATED PERSON?

The designated person can be a director or employee of the fund company, or alternatively, can be seconded to the fund company on a full or part-time basis from another entity, such as the investment manager or an entity which specialises in the provision of designated persons. Depending on the fund company's preferences, all or some managerial functions can be retained and performed within its own organisation by appropriate individuals while another fund company may wish to appoint third parties to perform the designated person roles.

### RESIDENCY REQUIREMENTS

The Guidance allows a fund company to appoint an individual resident outside of Ireland and who is not a director of the fund company to discharge any of the six managerial functions. Previously a designated person had to be a director of the fund company or, if not a director, an Irish resident.

However, at least half of the six managerial functions need to be performed by designated persons resident in the EEA. The same designated person can perform several

managerial functions including those of operational risk management and fund risk management but a designated person cannot perform fund risk management or operational risk management and investment management.

By way of an example, a US based investment manager with an Irish fund board comprising of four directors could retain the managerial function of investment management by appointing its own US director or a secondee from its own organisation as a designated person to the fund company and could appoint the same person or a different US based director or secondee to perform the managerial function of operational risk requirement and/or fund risk management. However, two EEA based designated persons would be required to perform at least three of the other four managerial functions.

It is also worth noting that the Central Bank requires that an independent director assumes the organisational effectiveness role. Essentially this role involves monitoring how well a fund company is organised and resourced. The director who assumes this role cannot perform any of the key managerial functions. This appointment reduces the number of

directors of a fund company who can assume a managerial function.

### CAPACITY

An individual must meet a number of requirements in order to fulfil the role of a designated person.

A designated person should normally have **experience and expertise** in the managerial function they have responsibility for carrying out or otherwise be able to provide such evidence as would satisfy a reasonable person as to their capability. The need for experience is most important where regulatory compliance is not a straightforward objective matter but requires judgement. The Guidance specifically refers to how judgment should be exercised in matters which are not simply matters of fact and how a designated person should rely on and assess reporting received in respect of a managerial function.

A designated person should have **sufficient time** available to carry out the role thoroughly and to a high standard.

A designated person must have **sufficient knowledge** in the area they are overseeing to query the information being provided to them and constructively challenge those who provide the information. The Guidance states that designated persons should approach information received from delegates with “healthy scepticism”.

A designated person must keep **up-to-date** on latest developments in the area they manage and must be sufficiently **senior**.

### SCOPE OF ROLE

The Guidance does not require the designated person to be the person who is carrying out all of the tasks which fall within their scope of responsibility. For example, the designated person responsible for capital and financial management will not be the person who prepares the accounts of the fund company but will be likely to manage

fund company employees or oversee delegates who carry out these tasks.

### OVERSIGHT OF DELEGATES

When a fund company delegates the performance of tasks, each delegate should know precisely what is being delegated to it and this should be documented in its written contractual arrangements. These written contractual arrangements will be a good starting point for designated persons in monitoring the performance of any delegate.

### REGULATORY OBLIGATIONS

The Guidance set out under each of the six managerial functions what the Central Bank believes to be the regulatory obligations relevant to the managerial functions of the designated persons as set out in the AIFMD and UCITS regulatory regimes. Other regulatory obligations may also apply, such as EMIR, the Market Abuse Regulation and AML. However, it will be up to a fund company to allocate these regulatory obligations under each of the six managerial functions and the designated person will be responsible for ensuring that these obligations are met.

### MEETINGS

The Guidance states that a designated person should have regular meetings with delegates. These meetings could be in the form of sub-committee meetings, conference calls, physical meetings or a combination of these. Designated persons should also perform on-site visits of delegates. The meetings should be less frequent than the frequency of the regular reporting to the designated person but more frequent than the board meeting schedule.

### POLICIES AND PROCEDURES

A designated person may have a role in advising the board of directors on the design process of the various policies and procedures (P&Ps) that a fund

company is required to have in place under the applicable law and regulation. The designated person should monitor the P&Ps to ensure that they are being complied with while also reviewing them periodically to determine whether they remain appropriate.

### FREQUENCY OF REPORTING

Reporting to the board by a designated person should be sufficiently frequent and include summary information on each sub-fund, where applicable. A designated person should be satisfied with or be responsible for the production of management information for the board so that the conduct of the designated person's work receives both appropriate monitoring by the board on a regular basis and on an exceptional basis where issues arise.

A designated person should propose and agree with the board appropriate thresholds and key performance indicators which trigger immediate escalation from delegates and the designated person to the board. In addition, a designated person should immediately escalate matters to the board where the designated person determines that this is warranted.

### SUPPORT

The promoter of the fund company will need to ensure that the individual who assumes the role of designated person has easy access to all of the fund company's delegates relevant to the managerial function and has sufficient resources at the designated person's disposal in order to be able to oversee the managerial function, to make recommendations to the board and to issue reports to the board.

### APPOINTMENT

A designated person should be appointed by way of a letter of appointment from a fund company which, if the person is also a director of the fund company, should be separate from the letter of appointment

relating to the director role. This means that where a director of a fund company also acts as a designated person, he or she should receive two letters of appointment – one for the role of director and one for the role of designated person. The letter of appointment should include the time commitment involved in carrying out the role of a designated person and the fees payable.

The letter of appointment should also refer to the various regulatory obligations listed in the relevant Annex in the Guidance which the designated person is responsible for ensuring are met by the fund company and its delegates so that the regulatory obligations themselves, scope of the oversight and monitoring of the particular managerial function are clear.

The letter of appointment should specifically provide that the designated person must put the best interests of investors in the investment funds under management ahead of any other interest the individual may have.

- » decide how it wishes to allocate the six key managerial functions between the board members and/or others taking into account the seniority and experience an individual needs to carry out the designated person role and the time commitment that the role requires; and
- » put a letter of appointment in place with each of the designated persons.

## NEXT STEPS FOR A FUND COMPANY

A fund company needs to consider taking the next steps to implement these requirements. It must:

- » review the regulatory obligations placed on it under the AIFMD or UCITS regulatory regimes and any other regulatory obligations and should identify precisely under which managerial function each regulatory obligation falls. This will help designated persons to understand the expectations placed on them;

**arthurcox.com**

### Dublin

+353 1 618 0000  
dublin@arthurcox.com

### Belfast

+44 28 9023 0007  
belfast@arthurcox.com

### London

+44 207 832 0200  
london@arthurcox.com

### New York

+1 212 782 3294  
newyork@arthurcox.com

### Silicon Valley

+1 650 943 2330  
siliconvalley@arthurcox.com