

Irish Funds Industry Association (“IFIA”) Corporate Governance Code for Collective Investment Schemes (“CIS”) & Management Companies (“ManCo.”)

Background

- On 14 December 2011, the IFIA issued the Corporate Governance Code for Collective Investment Schemes & Management Companies (the “Code”). The Code was accompanied by a Frequently Asked Questions document.
- The Code recommends standards that an Irish authorised CIS and ManCo. should meet in the interest of promoting strong and effective governance.
- The Code replaces the previous Corporate Governance Code for Irish Domiciled Collective Investment Schemes issued by the IFIA in September 2010.

Effective date

- The Code becomes effective from 1 January 2012, with a twelve month transitional period.

Legal basis

- The Code is voluntary in nature but there is an expectation from the Central Bank of Ireland that the Code will be adopted. A review will be carried out within an 18 month period to assess adoption rates.
- The board of directors of the CIS or ManCo. is responsible for compliance with the Code if adopted.
- Where the Code is adopted but its provisions are not fully applied, the directors should set out their reasons why in the Directors’ Report accompanying the annual audited accounts, or alternatively publish the information through a publicly available medium (e.g. website).

Some key points to note

- Three directors are recommended as the minimum size for a board.
- It is recommended that the board comprise a majority of non-executive directors, and at least one independent director.
- It is strongly recommended that at least one director be an employee, partner or director of the promoter or investment manager.

Independence - Commitment - Expertise

- At least two directors should be available to meet the Central Bank of Ireland at short notice, if so required.
- There is no maximum number of directorships prescribed in the Code, however, each member of the board must have sufficient time to devote to the role of director and associated responsibilities. Each CIS or ManCo. should specify and document at the outset and, on a periodic basis, as appropriate the time commitment it expects from each director.
- Directors are required to disclose in writing to the board their other time commitments, including time devoted to directorships of CIS domiciled in foreign jurisdictions (“Foreign CIS”). The board must satisfy itself that the directors have sufficient time to fully discharge their duties.
- Where directorships are held outside CIS, Foreign CIS or ManCo. (non fund directorships), there shall be a rebuttable presumption that a maximum of eight non-fund directorships may be held without impacting the director’s time available to fulfil his or her role and functions as a director.
- Before being appointed, a new director needs to demonstrate to the satisfaction of the board that he or she meets the Central Bank of Ireland’s fit and proper standards.
- On appointment, the board shall ensure that directors are aware of the relevant policies and procedures and have received adequate and sufficient training to enable them to discharge their duties (although it is generally expected that the directors themselves would be responsible for ensuring that they maintain the knowledge that they need in order to competently carry out their responsibilities).
- The board shall review the overall board’s performance and that of individual directors annually with a formal documented review of board membership taking place at least once every three years. During 2012, the IFIA will provide some guidance on how this review may be achieved.
- All directors are expected to attend and participate at board meetings. An attendance schedule should form a part of the annual board performance review process.
- The board should establish a documented ‘conflict of interest’ policy for its members.
- The board should establish and document a formal schedule of matters specifically reserved to it for decision (for example launch of new sub-funds).
- The board should ensure that internal control procedures of service providers are being monitored to ensure that they are effective.

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