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IN IRELAND

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Fund Management Company Effectiveness  
Delegate Oversight Consultation  
Markets Policy Division  
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Iveagh Court  
Harcourt Road  
Dublin 2

4<sup>th</sup> December 2014

**Re: Response to Consultation on Fund Management Company Effectiveness - Delegate Oversight**

The Institute of Directors in Ireland (IoD) welcomes the opportunity to take part in the consultation process on Fund Management Company Effectiveness - Delegate Oversight.

**About The Institute of Directors in Ireland**

The Institute of Directors in Ireland is the representative body for over 2,100 directors and senior executives within the private and public sectors. As the leading voice in the debate on improving corporate governance standards, the Institute of Directors is dedicated to developing and improving the effectiveness and performance of directors and boards throughout Ireland.

**Response to consultation**

**Do you see any obstacles to the Chairperson performing the operational effectiveness function?**

The IoD has a number of concerns with regard to the proposed introduction of a clarified task of organisational effectiveness oversight being assigned to the Chair of the board.

While the task of responsibility for the effectiveness of the board should of course be retained by the Chair, the description of the tasks attributed to the individual performing the organisational effectiveness function includes reference to 'day-to-day control', which is at odds with the core role of the Chair, whose role is to oversee the operations of the board and not the day-to-day running of the company, unless they hold an executive Chair position.

While the role of Chair necessitates considerable work outside of attendance at board meetings, this work should not be focused on the day-to-day operational control of the entity, which is more in line

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with an executive task. The primary role of the Chair is to ensure that the board is effective in its tasks of setting and implementing the entity's direction and strategy, and a degree of separation from day-to-day operational control is necessary in order for the Chair to maintain the independence and external perspective necessary to effectively carry out the role. As best practice would dictate that the position of the Chair should be reviewed at least every three years, the extension of extra oversight duties may give rise to succession planning considerations and continuity issues during periods of transition.

If introduced, the assigning of this function to the Chair is also likely to considerably increase the time commitment required for the role. In the absence of any limits on the number of directorships a Chair may hold in fund management companies, this could lead to capacity issues for those already in such positions.

Should this proposal proceed, the IoD would recommend that a mandatory requirement is introduced requiring the Chair to confirm, in writing, that they have sufficient time to devote to the role in order to discharge all responsibilities effectively and also to disclose any other significant commitments. Consideration should also be given to additional training requirements for Chairs in performing these additional duties.

### **Is relaxing the two Irish resident director requirement the correct approach?**

The IoD recognises that Ireland's success in attracting foreign direct investment and the increasing number of multi-national organisations now operating in Ireland has contributed to changing the business landscape considerably, and indeed will continue to change it into the future. Where applicable, the inclusion of foreign based directors on boards of companies in Ireland is to be welcomed, as it contributes to greater diversity of board composition, which is essential for avoiding governance pitfalls such as 'group-think' and biased perspective.

However, the IoD is concerned that in the absence of any clear impact analysis, or projections on the number of fund management companies that are likely to change their composition and avail of the relaxed residency requirements, it is difficult to gauge the potential for unintended consequences. Should there be a considerable shift, with a significant number of directors being based outside of Ireland, this could lead to investor confidence issues and a perceived lack of influence over directors based outside of Ireland, on the part of the Central Bank. The IoD welcomes the Central Bank's commitment to encourage a broad range of relevant skills and competencies on fund management company boards, but is concerned that the identification of a scarcity in certain competencies, in areas such as risk management and portfolio management, may be the result of wider problems within the selection and appointment system to boards, that will not be addressed by changing residency requirements.

Issues such as the potential for over-concentration of directorships among a small group of directors due to the lack of directorship limits, a perception that the board selection process is a 'closed-shop', or based on who you know, and the way in which available positions are communicated and advertised, may have contributed to the identification of certain skills shortages.

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The IoD would welcome further clarification from the Central Bank on how the skills shortage was identified and would recommend that all issues which may have contributed towards the identification of a scarcity in competencies in certain areas are examined and addressed, in the first instance, before a permanent change in residency requirements for directors is introduced. The IoD would also recommend that guidelines to encourage further openness and transparency in the board selection and appointment process for fund management companies are introduced.

The IoD also believes that the proposal within this consultation for the future documenting of a rationale for board composition may encourage fund management companies to look at a wider pool of candidates, thus contributing to naturally addressing the current skills shortages issue. The welcome clarification by the Central Bank within this consultation that boards do not necessarily need to appoint lawyers should also contribute to naturally addressing the issue of perceived narrow composition on boards.

Should fund management companies continue to face difficulties in sourcing suitably qualified directors, an initial approach could be considered whereby fund management companies can apply to the Central Bank to waive the residency requirement, documenting their rationale for the request, with each request being considered by the Central Bank on a case-by-case basis.

The Central Bank should also place greater emphasis on the importance of independent oversight in the governance of fund management companies in its guidelines, and have a clear recommendation that a majority of directors of fund management companies should be independent and non-executive, as is the case in regulated financial institutions in Ireland.

**What are your views on the proposed approach to measuring time spent in Ireland? Can you suggest any alternatives or any enhancements to the definition proposed by the Central Bank?**

While the IoD acknowledges that the Central Bank has outlined in the consultation paper a reluctance to link the definition of residency, in this case, with the definition of tax residency, we believe creating a definition of residency which differs to that of Irish tax authorities and the Irish Stock Exchange may cause unnecessary confusion within the marketplace, especially internationally.

The IoD is also unclear as to how an independent measure of residency will be monitored and enforced by the Central Bank and would welcome further clarification in this regard.

**Is there a downside to requiring fund management companies to document the rationale for the board composition? Will fund management companies require a transitional period during which they can alter their board composition to ensure they have sufficient expertise and how long do you consider would be a reasonable timeframe for such adjustments?**

The IoD welcomes the proposal to introduce a new rule requiring fund management companies to document, as part of the authorisation process, a rationale for its board composition. As previously mentioned, the IoD believes this will contribute to alleviating the current issues regarding skills shortages in certain areas. Board composition is often linked with board performance and achieving the right balance of skills and competencies on the board will contribute to enhancing its overall

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effectiveness. The IoD would also recommend that regular reviews of board composition be undertaken, to ensure the overall effectiveness of the board.

The IoD would envisage the potential for board size to increase as a possible unintended consequence to this requirement. The Central Bank should monitor trends in this regard, as fund management companies may feel that additional directors are required in order to satisfy this condition as part of the authorisation process. While in some cases it may be necessary that fund management companies increase the size of the board, in order to ensure that the board as a whole has sufficient expertise to operate effectively, there should not be a widespread increase in board size, as a board that is too large in size may become unmanageable and possibly ineffective.

The role of the Central Bank in determining competencies should not be too prescriptive. While competencies in areas such as risk management, compliance and audit are of course very important to the industry, so too are other skills such as commercial acumen, the ability to challenge and leadership qualities. The dynamic created by having a mix of skills and experience within the boardroom must also be taken into account and the Central Bank should pay due regard to how well boards work together overall, rather than looking strictly at individual competencies.

In terms of a transitional period to meet this new requirement, the IoD would firstly recommend that consideration is given to the fact that most boards will have natural renewal and rotation periods as directors' terms are completed. Some boards may also deem their current composition to be effective and will therefore require no change.

The IoD would recommend that there is a two phase transitional period for this requirement. The first phase should require all boards to review their composition and determine whether any changes are necessary. Should no changes be required, the board should document this and identify and agree a suitable time to re-examine its composition. Should changes be required, the board should identify whether a skills shortage requires an immediate action, or whether the competencies can be rectified within the board's rotation periods, in order to limit disruption and avoid situations where the board is unnecessarily increasing in size. The IoD would also recommend that boards review their composition against a formal skills matrix, which is individual to each board, and pay due regard to skills outside of core areas such as risk management, audit and compliance.

The IoD would envisage that this first phase could take place within a three month period.

The second phase would require an implementation period for boards that have identified a need for changes in composition. As previously mentioned, in order to limit disruption and avoid unnecessary enlargement of boards, each board should have the flexibility to determine whether immediate action is needed, or whether renewal as directors rotate is sufficient.

### **Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?**

While the IoD recognises that due to the variance in size and complexity of fund management companies in Ireland, along with the practice of sub-dividing funds into standalone companies thus

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legally separating assets, a proposal to impose a limit on the number of directorships a person can hold would be challenging. However, the Central Bank should consider a categorisation system for funds, similar to the PRISM system, where considering a variety of factors, funds are categorised based on their significance and limits on directorships are applied accordingly. Otherwise, in the absence of such limits on directorships, the IoD believes that there should be a mandatory requirement for directors to confirm that they have adequate time to fully discharge their duties and be obliged to disclose other significant commitments, including the number of other directorships held.

We appreciate the opportunity to present this submission and would be delighted to discuss the issues raised in greater detail or to make any further contributions as necessary. We would also be pleased to present our views in relation to the review of the IFIA Corporate Governance Code.

Yours sincerely,



Maura Quinn  
Chief Executive  
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