

***An Independent Review of 'Organisational Effectiveness' within  
the Irish Funds Industry***

***A discussion directed towards framing an accepted approach***

***By***

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## **Introduction**

Both *Bridge Consulting* and *Governance Ireland* have come together to carry out a review on the new “Organisational Effectiveness” role which has emerged from the Central Bank of Ireland’s final guidance on Consulting Paper 86 (CP86). So what is ‘CP86’? In an industry well versed in acronyms, CP86 refers to an initiative by the Central Bank of Ireland aimed at reviewing fund management company effectiveness in Ireland. By underpinning the substantive controls of fund management companies approved and licensed to operate in Ireland, the Central Bank is looking to further enhance investor protection.

The Central Bank of Ireland (CBI) commenced this consultation with the Irish funds industry in September 2014 and via three separate consultations, the process culminated in final guidance being issued in December 2016 (see **Appendix 1 – Feedback & Guidance**). In carrying out this process, the CBI examined the following areas:

1. Delegate Oversight
2. **Organisational Effectiveness**
3. Directors Time Commitments
4. Managerial Functions
5. Operational Issues
6. Procedural Matters

Our review focuses on item 2 – Organisational Effectiveness (‘OE’), for which the CBI provided the least detailed guidance.

### **Who does CP86 / Organisational Effectiveness impact?**

The scope of the new guidance as set out by the Central Bank of Ireland on 19 December 2016 impacts Investment Companies, UCITS Management Companies, Alternative Investment Fund Managers (AIFMs) and Alternative Investment Fund Management Companies incorporated and authorised in Ireland.

### Overview of the OE Role within CP86

The CBI's guidance aims at ensuring that an independent director within a fund management company remains continuously focused on the organisational effectiveness of the fund company and its delegates. The guidance addresses the controls required by fund management companies. It ensures that correct substantive controls are in place and are being effectively monitored on an ongoing basis. The new OE role sits alongside – six newly consolidated Designated Management functions that apply to all new UCITS / AIF fund management companies or self managed entities established in Ireland (**Appendix 2 – Consolidation of Management Functions**). This applies immediately to newly authorised firms and from 1 July 2018 for existing legacy Irish funds (**Appendix 3 – CP86 Timetable**)

### **Background to the Bridge Consulting / Governance Ireland Review**

#### Why carry out the review?

Due to the number of questions that have arisen within the Irish funds industry on OE, Bridge Consulting and Governance Ireland came together to co-chair a series of workshops on the topic. Invitations were provided to a range of industry professionals operating within the Irish funds industry. The groups consisted of Independent Non-Executive Directors and representatives from leading legal and consultancy firms.

#### Key Considerations

Our key considerations in addressing OE were as follows:

- 1) OE is a **new** function introduced by CP86, one that must be fulfilled by an independent Non-Executive Director on the board of the fund management company
- 2) There is currently limited guidance available as to the requirements of the role. One possible reason for this is the variance in risk profiles from fund to fund. Another reason may be that the differences across board and fund structures are too numerous to be

framed by one defined approach. By not providing a template the risk of a ‘one size fits all / tick the box’ approach is reduced. However, the feedback received from independent Irish directors has been that additional detail and guidance from the CBI would have proven beneficial.

- 3) By producing this review we are able to share the feedback from the series of round table discussions in which a range of independent directors and industry professionals provided their opinions on the subject and their insight and approach to carrying out the role.

### **Key Requirements for OE**

The following are the key requirements for the OE role:

- Under CP86 there is a requirement for a continuous review of the effectiveness of the organisation
- The OE function must be carried out by an Independent Non-Executive Director and if a chairperson is independent this will most likely sit with that person
- A minimum of at least one OE report per annum should be delivered to the fund Board, however monitoring / escalation to the board should be ongoing and continuous
- Updates and references regarding OE should be included in the organisation’s Business Plan / Programme of Activity documents
- An external model can be used but the actual report should be owned / delivered by the OE designate
- In taking on the OE role the Independent Non-Executive Director cannot be allocated other designated functions
- The CBI Guidance provides a non exhaustive list of matters that the OE Director is expected to be involved in including monitoring the adequacy in management company resources as compared to it’s day to day activities, ensuring the organisational structure is fit for purpose, considering conflicts of interest, monitoring delegates via the supervision of delegates and reporting / escalating to the board where required
- The ‘Go Live’ date for OE depends on the date of authorisation

### **Objective and Approach to the Bridge Consulting / Governance Ireland Project**

Our objective was to engage with industry stakeholders on the proposed OE role. Taking the approach of inviting a range of informed contributors to a series of roundtable forums, enabled discussions on the broad guidelines that might support the industry and in particular the independent director community on the approach, structure and delivery of the new regulatory compliance function.

### **Question Topics**

The topics and areas referred to in the review are outlined below. For details on specific questions asked, please see **Appendix 4 – Forum Structure and Questions**.

- OE structure
- Benefits of OE
- Challenges presented by OE
- Support required
- The OE report
- Fees
- Implementation
- Impact of OE

### **Key Findings**

#### **Feedback and Themes:**

Feedback and themes arising from the forums were as follows:

#### **1. Best Practice or Additional / Enhanced Board Function**

- There were several views supporting the proposition that the OE role is simply reiterating 'best practice', as it was acknowledged the majority of requirements are already in place today
- It was noted that the OE position has not been defined as a 'PCF' role (Pre-Approval Controlled Function), authorised by the Central Bank of Ireland, nor does it require a separate letter of engagement

- There was broad agreement that the role and function of the ‘Chair’ was a key component when considering the OE function
- It was accepted that in order for the OE role to function effectively, the Chair should be independent
- Views were offered and accepted that the OE function should not be over engineered to create additional cost impact on fund performance
- There was a general acceptance that in many cases, the more established, resourced and mature entities would need to do very little in addition to what they currently do today by way of good board governance and protocol to meet the OE provisions. Some additional work may be required with smaller fund structures where greater benefit may be derived.
- Many agreed that the CBI has given clarity on the role of management in managing the day to day business and the Board in overseeing and monitoring business activities
- There was a general acceptance that the OE role required ongoing review and periodic reporting to the board. There are several reporting models that can be adopted depending on the maturity and complexity of the entity involved (see ‘OE Report’).
- There was a general consensus that the clarity of reporting lines from the Designated Persons must be unambiguous. The Board must retain collective responsibility. The OE Director cannot / should not be advised separately or in priority to the Board as and when issues arise.
- Monitoring was again discussed as being an essential approach to OE

## 2. Potential Benefits and Challenges

### Benefits

- While there was no general view as to the surety of benefits arising from implementing the new OE role, one group considered that OE could be seen as a useful tool to facilitate the closing out of board action points in the intra board meeting periods. It could also bring added value to ensure that the Designated Persons and the Board were fully aligned.

- It was felt by some participants that the OE role would aid the collective responsibility of the board
- The challenge and potentially the greater benefit could lie with smaller organisations which may have greater limitations regarding resources. There was an acknowledgement that smaller fund structures would benefit in having to meet the OE requirements.
- There was a general agreement that the oversight and reporting is already in place in many boards. Adding the OE role simply extends the data collection and reporting functions with little material added value.
- A view was offered that in many respects the benefit was significant to the CBI in aiding their oversight of certain stakeholders in the industry
- There was a broad consensus that an opportunity was missed in the CP86 process to better define and offer guidelines on the role of the Chairperson. This is now central to the OE debate.
- An opportunity may also have been lost whereby the CBI could have championed the need to have an Independent Chair
- One group discussed the possibility of adopting an OE Committee approach similar to that already followed by regulated insurance companies. Reference was made to the use of Internal Audit and Risk Reports as being more than adequate supports for the OE role.
- The committee option may not fit a smaller organisation and may in fact over complicate the OE function as a result.
- There was a consensus that it was not the OE function to manage Designated Persons, but it was agreed there would need to be an enhanced level of communication between the roles.
- Comments were offered pointing to some Boards already complying with the OE provisions. It would be beneficial to gain an understanding of how they are approaching the task and what precedents are being established in this initial period.



### Challenges

- There was a general consensus that the OE role could not become an executive role and commitment. The group agreed that in many cases the delegated structures and model could and should be relied upon and that the balance in oversight and direction rested best with the Board.
- It was agreed that a best practice definition of ‘ongoing review’ was not possible at this stage and that projects would need to be considered on a case by case basis
- Key considerations in assessing the challenges of introducing OE related to the complexity and maturity of the business and the composition of the board
- A key challenge was identified in what the definition of ‘effective’ and ‘non-effective’ might be
- There was a general concern that the CBI will simply adopt an approach whereby the OE role is ‘fully responsible’ for OE, when in fact the collective decisions on OE rests with the Board
- There was a recurring concern, regardless of the acknowledgement of collective responsibility that the CBI will want to identify one person. The broad sense was that this should be challenged and possibly best assessed under the performance review of the Board.
- One group agreed that the OE role must be assessed on a case by case basis depending on a number of criteria that might include the complexity of the business, the skill set at the Board, and the life cycle of the product
- Concerns were raised for those scenarios where the Chairperson is not independent and the OE role will be viewed as a point of conflict with the Chair
- Many agreed that a key concern in taking on the OE mandate was around the managing of conflicts of Interests and board effectiveness reviews. Guidelines are needed for these scenarios
- There was a general agreement that the CBI have access to two resident directors in the event that issues arise. This should be sufficient, but the context may change in the light of Brexit and the re-defining of the EEA.

- The discussion group held a broad view that there was a real risk of ‘role creep’ in relation to the OE role
- There was a consideration of the impact that additional regulatory costs related to OE might evoke
- There was a general concern that the OE initiative would become a ‘Tick Box’ process and add little value
- Comments were offered that the shareholders will not have sight of the function, and no report appears in the annual audited statements. No reference is currently made in the prospectus either.

### **3. Support for OE Role**

- In a separate forum the group discussed the value of an OE Committee structure that would support the OE report. One view offered the value of harnessing the Internal Audit and Risk Designated Person’s reports and of having these validated / sense checked by an external source (Bridge). The broader view in the forum noted the potential over-engineering of the role and that not every organisation has a designated Internal Audit function
- One group’s consensus was that the supporting structures detailed in the Programme of Activity and Business Plans were critical. The OE report must be able to rely on the embedded structures and should be practical and functional.
- A general consensus was that the use of an accepted report template would be a useful support
- Another key support identified the need for a standard approach in relation to the frequency and format of the OE report. The group pointed to the current approaches of written and verbal updates with some simply focusing on an exception based model for reporting.
- It would appear that there was a general acceptance of a quarterly exception based report as being a useful model to adopt in the first instance
- One group pointed to the need for clarity from the CBI as being a useful support

- There was a broad consensus that support would be required in order to coordinate the various report streams required to facilitate the OE function
- Many agreed that the CBI would expect to see a process of ‘checking’ the validity and accuracy of the reports presented to the Board
- There was a general acknowledgement and agreement that where reports to the OE indicate issues that may require closer examination, the OE should instruct and review the findings of the investigation, not actually conduct the granular investigation themselves. This point was further developed with a clear consensus that Management must manage the business and that the Board must control and direct, while at the same time retaining collective responsibility
- In relation to the industry narrative associated with OE, a useful support could be offered through the various legal firms agreeing a standardised phrasing and narrative around the OE function. This would help clarify the perception of what the OE needs to be. This language could then be used in all POA and Business Plans with additional amendments where appropriate (in line with the funds in question).
- There was a group consensus with one group that the position of Chair must be supported in the taking on the OE role and that the independence of this position would be a fundamental enabler going forward

#### **4. The OE Report**

- There was a consensus that OE should be added as a quarterly agenda items to the Board meetings
- A written or verbal update should be given at each quarterly Board meeting
- There was a preference in some cases for producing an annual report instead of a quarterly written update (with both options being viewed as appropriate)
- In considering the support structures needed for implementing the OE role the group discussed the frequency of the reporting cycle for OE. There was a general agreement that a quarterly Board report was appropriate. In this regard it might be useful to have a starter template, as offered by Bridge, as a first step

- One group discussed the contents of the OE report in terms of focus and detail and there was clear consensus that the six newly consolidated Management Functions under CP86 would form the basis of the report
- It was noted that, in reality, there will be a transition period between the industry moving to a standardised reporting format and the CBI offering additional guidelines / feedback on a case by case basis

## 5. Planning and Time Frame for Implementation

### Planning

- One group noted and agreed that the CBI expects to see the implementation planning for the OE function in 2017
- There was a broad consensus that Board should be targeting to approve / adopt OE functionality in Q1 2018
- In one group caution was advised regarding the potential triggers to implementing the OE function, particularly when the POA and Business Plan needs to be updated to reflect the new role (as well as the consolidated Management Functions)
- The reporting structure must be amended in the POA / Business Plans to give reference to the OE role and key deliverables required to perform the role
- The Group agreed that clear and distinct language is needed to ensure appropriate and effective reporting to the OE role

### Time Frame

The broad consensus was that Q1, 2018 was the target date for legacy firms approved prior to November 2016. For those management companies authorised after the November 2016 date, the new requirements noted in the new Management Companies Directive apply immediately.

**6. Fees**

- The consensus was clear that the director's functions would be extended as a result of taking on the OE role and there would be a time/cost impact
- There was general agreement that the additional costs associated with OE should be viewed as an extension of the director's duties and in most cases would be nominal in size
- Clarity would be required to oversee the OE costs being attributed to the AIFM / Management Company Board and the subsequent re-charge to the fund structure as part of the cost of regulatory compliance
- As any increase was viewed as an extension of the director's fees, the additional amount was felt to be chargeable to the fund
- Each group noted that OE activity was now a reality and is part of the regulatory compliance landscape for the industry

**7. Impact of CP86 / OE on the international profile of the Irish Funds industry**

The respective groups broadly felt the initiative would not positively add to the international profile of the Irish funds industry. It was also broadly agreed that many firms already had the majority of the work under the OE role already in place.

**8. Further Questions**

Questions raised overall included the following:

- How will the CBI look to qualify and validate the performance of the OE role
- Where the Internal Audit function should now sit (does it fall under OE?)
- The application of PCF status or not to the OE role would benefit from more guidance

## Next Steps and Action Plans for Consideration

The roundtable sessions considered some key requirements and actions for companies. These included the following:

### **1. Ensure ongoing compliance**

While additional guidance regarding the OE role is not expected, the reality is that several newly launched management companies are already required to comply with the OE requirement. Additional transparency on the CBI's requirements / expectations will evolve as industry stakeholders gain experience via new authorisations.

### **2. Complete structure, process and documentation updates**

For those boards that may not have additional resources to comfortably meet the new regulatory requirement, the challenge will start with how to define the OE role within their own structures. Key documentation such as the Business Plan (UCITS) or the Programme of Activity (AIFs) will be required to reference the OE Role and how this role will be fulfilled.

### **3. Meet the CP86 deadline for both newly approved and legacy firms**

The general updates outlined above, coupled with the requirement for existing funds to update current fund documentation in time for Management Company Directive on 1 July 2018 will provide additional insight as to what is and what is not acceptable in the eyes of the CBI (see Appendix 3 – CP86 Timeline).

### **4. Ensure preparedness for inspections**

The CBI has advised the funds industry of its future intention to carry out thematic inspections on fund entities with a PRISM (Probability Risk and Impact System) rating of 'Low'. Such inspections will most likely include a review of OE. The feedback from these reviews will help industry stakeholders gauge the appropriateness of their respective approaches.

**Key Actions:**

- Fund management companies need to ensure that sufficient work is underway to comply with the July 2018 requirements under CP86
- The appointment of the OE Director is required
- The role and function of the Chair is fundamental
- For OE to work, the fund Board needs to ensure that its policies and procedures are well documented and escalation processes are being followed
- Delegate oversight may evolve as a result of the new requirements. It is also anticipated that OE will become an item for future Board meeting agendas
- The industry may wish to encourage the framing of a 'Principles or Guidelines to OE' paper for collective reference and usage. This would require wider engagement with the Irish Funds and the CBI.

Bridge Consulting and Governance Ireland will continue to monitor developments and work in concert as an industry advocate. We will look to extend activity where necessary in order to ensure clarity around requirements and efficiency in processes.

## About Bridge Consulting

Bridge is an Irish consulting company focused on international funds. Founded in 2005, Bridge provides a range of services from specialist regulatory compliance, risk, and corporate governance to the provision of fund substance via Designated Persons or Management Company solutions.

Our services include support for both 3rd Party Management Companies as well as providing our own proprietary Super Management Company that manages European UCITS and AIFs (Alternative Investment Funds). Our solution suite allows asset managers to concentrate on their core business while we take care of the rest.

Based in Ireland, Bridge is a leading provider to a diverse client base ranging from large global investment managers to niche complex boutique asset managers. Our 100+ clients have assets exceeding \$250 Billion and are located in the US, Europe and Asia.

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## About Governance Ireland

Governance Ireland is an independent consultancy firm specialising in corporate governance. Our services include high quality advice, assessment and review, facilitation, training and support for board and directors.

Our team, all serving directors, has the professional expertise and practical experience to support, assist and guide organisations towards better governance structures and best practice.

Our clients include government agencies, charities, voluntary bodies, credit unions, financial services organisations and private sector organisations.

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## Appendices

### Appendix 1: References

#### Feedback from the CBI on CP86 (Dec 2016)

[https://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp86/161219\\_cp86-feedback-statement\\_third-consult\\_final\\_rhd.pdf?sfvrsn=4](https://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp86/161219_cp86-feedback-statement_third-consult_final_rhd.pdf?sfvrsn=4)

#### Final Guidance from the CBI on CP86 (Dec 2016)

<https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Funds/UCITS/Guidance/fund-management-company-guidance.pdf>

Appendix 2

CP86 – Consolidation of Management Functions

	New Historic	Investment Management	Regulatory Compliance	Fund Risk Management	Distribution	Capital and Financial Management	Operational Risk Management
Decision Making		✓	✓	✓	✓	✓	✓
Monitoring Investment Policy, Strategy and Performance		✓					
Monitoring Compliance			✓				
Risk Management				✓			
Complaints Handling			✓				
Financial Control						✓	
Accounting Policies & Procedures						✓	
Monitoring Capital						✓	
Internal Audit							✓
Liquidity Management				✓			
AIFMD Reporting			✓				
Remuneration Policies			✓				
Record Keeping			✓				
Operational Risks							✓
Management of Conflicts of Interests			✓				
Supervision of Delegates		✓	✓	✓	✓	✓	✓

### Appendix 3 – CP86 Timeline

#### UCITS Management Companies & UCITS Self-Managed Investment Companies

Provision	Transition Date		
	Authorised before 1 Nov 2015	Authorised between 1 Nov 2015 and 30 June 2017	Authorised after 30 June 2017
<b>Managerial Functions</b> Schedule 10 of UCITS Regulations	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
<b>Performance of OE Role</b> Regulation 100(7)	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
<b>Effective Supervision Requirement</b> (to be included in forthcoming amendment to the UCITS Regulations)	1 July 2018	1 July 2018	The Central Bank will only authorise fund management companies that are organised in a way that complies with these provisions
<b>Retrievability of Records</b> (to be included in the forthcoming amendment to the UCITS Regulations)	1 July 2018	1 July 2018	
<b>Guidance: Part I</b> <b>Delegate Oversight</b>	4 November 2015	Applicable from date of authorisation	Applicable from date of authorisation
<b>Guidance: Part II</b> <b>OE</b>	Applicable from the date that a fund management company has appointed a person to the OE role		
<b>Guidance: Part III</b> <b>Directors' Time Commitments</b>	4 November 2015	Applicable from date of authorisation	Applicable from date of authorisation
<b>Guidance: Part IV</b> <b>Managerial Functions</b>	1 July 2018	1 July 2018	Applicable from date of authorisation
<b>Guidance: Part V</b> <b>Operational Issues</b>	Retrievability of Records: 1 July 2018  Dedicated Email:	Retrievability of Records: 1 July 2018  Dedicated Email:	Retrievability of Records:  Applicable from date of authorisation  Dedicated email address:



	30 June 2017	30 June 2017	Applicable from date of authorisation
<b>Guidance: Part VI</b> <b>Procedural Matters</b>	This guidance is a reflection of the existing fund management company guidance and is already applicable. Consequently, no transitional arrangements apply.		

**AIFMs and Internally Managed AIFs**

Provision	Transition Date		
	Authorised before 1 Nov 2015	Authorised between 1 Nov 2015 and 30 June 2017	Authorised after 30 June 2017
<b>Managerial Functions</b> AIF Rulebook Chapter 3, iii, 2	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
<b>Performance of OE Role</b> AIF Rulebook Chapter 3, iii, 3	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
<b>Effective Supervision Requirement</b>  (to be included in forthcoming amendment to the AIF Regulations)	1 July 2018	1 July 2018	The Central Bank will only authorise fund management companies that are organised in a way that complies with these provisions
<b>Retrievability of Records</b>  (to be included in the forthcoming amendment to the AIF Regulations)	1 July 2018	1 July 2018	
<b>Guidance: Part I</b> <b>Delegate Oversight</b>	4 November 2015	Applicable from date of authorisation	Applicable from date of authorisation
<b>Guidance: Part II</b> OE	Applicable from the date that a fund management company has appointed a person to the OE role		
<b>Guidance: Part III</b> <b>Directors' Time Commitments</b>	4 November 2015	Applicable from date of authorisation	Applicable from date of authorisation
<b>Guidance: Part IV</b> <b>Managerial Functions</b>	1 July 2018	1 July 2018	Applicable from date of authorisation
<b>Guidance: Part V</b>	Retrievability of Records:	Retrievability of Records:	Retrievability of Records:

<p><b>Operational Issues</b></p>	<p>1 July 2018  Dedicated Email: 30 June 2017</p>	<p>1 July 2018  Dedicated Email: 30 June 2017</p>	<p>Applicable from date of authorisation  Dedicated email address: Applicable from date of authorisation</p>
<p><b>Guidance: Part VI</b>  <b>Procedural Matters</b></p>	<p>This guidance is a reflection of the existing fund management company guidance and is already applicable consequently, no transitional arrangements apply.</p>		

The conclusion of the CP86 process is a series of new regulatory rules as well as regulatory guidance. The Central Bank has noted on various occasions that the guidance is designed to ensure fund management companies are compliant with all relevant regulations.

## Appendix 4 – Forum Structure and Questions on OE

### Structure

- A forum structure applied to all three events
- Each forum had a defined number of invitees from the investment industry
- Each forum was co-hosted by Bridge Consulting and Governance Ireland
- Each forum session lasted no longer than 90 minutes
- Attendees at each forum session were provided with 19 structured questions 24 hours before the meeting to help develop the insight on the topic of OE and to take suggestions as to concerns and best practice
- The feedback provided in response to each question was noted and is referenced in this review
- After each forum session the minutes were shared with the participants to ensure accuracy
- All feedback was and remains anonymous
- At the end of each meeting Bridge Consulting shared a number of templates it has developed to support Independent Directors already fulfilling the role of OE (OE) Director. These were considered a potential starting point from which the OE Director could customise and develop their own reporting to fund boards.

### OE Questions

Q1	OE Structure	<i>In your opinion should OE be a separate distinct function or is it simply best practice corporate governance?</i>	Yes / No Comments
Q2	OE Structure	<i>Could this new requirement be approached as an additional board function?</i>	Yes / No
Q3	Benefits	<i>Do you think the new OE Role will prove beneficial and if so, who will be the main beneficiary?</i>	Yes / No Comments
Q4	Benefits	<i>Do you feel the delivery of the OE report to the Board increases the quality of Board oversight?</i>	Yes / No Comments

Q5	Challenges	What are the particular challenges to the INED in taking on this role e.g. time, experience, knowledge, risk exposure?	Comments
Q6	Challenges	Do you feel the new role places greater potential responsibility (or liability) on the shoulders of the OE director than on other members of the Board?	Yes / No Comments
Q7	Challenges	Would you have reservations about accepting the OE Role and if so what are these?	Yes / No Comments
Q8	Support	What level of support / additional resources is required for the OE Director and from whom?	Comments
Q9	Support	Is there a requirement for training to support this new role?	Yes / No
Q10	Support	If related or contracted delegates are restricted in taking on the OE function, is there a market appetite for an independent resource to facilitate this support function to the board.	Yes / No
Q11	OE Report	What would an OE Report to the board look like? What details would a board expect to see?	Comments
Q12	OE Report	Should the OE feedback be provided in an independent OE Director Report or in some other form?	Comments
Q13	OE Report	How often should Boards expect to receive updates on OE?	Comments
Q14	OE Report	Should the OE Review be restricted to the 6 new aggregated agenda topics or by the larger group of functions mandated prior to CP86?	Comments
Q15	OE Activity	Access to key control committees is vital to give credence to an OE Review. What model would be considered most appropriate?	Comments
Q16	OE Fees	What costs / fees should be attached to the new role and should fund costs be impacted?	Comments



Q17	<i>OE Fees</i>	<i>Who should bear the costs, the Board of an AIFM or the Funds?</i>	<i>Comments</i>
Q18	<i>OE Implementation</i>	<i>Regarding the target dates for compliance, is this issue now a factor in planning in 2017?</i>	<i>Yes / No</i>
Q19	<i>Impact of OE</i>	<i>Do you believe that implementing this role will enhance Ireland as a jurisdiction of choice for international funds e.g. is there added benefit to fund promoters?</i>	<i>Yes /No Comments</i>

## Appendix 5 – Summary Findings from the Individual Forum Sessions

### Forum 1 - Themes and Findings

#### Best Practice and Additional / Enhanced Board Function

- There was general agreement that the OE Role should not become a quasi-executive function
- It was also agreed the best practice standards were needed to ensure that the OE role does not become a second line reporting function re-using data already collated and presented to the Board
- There was a danger that the OE role would become over-engineered
- It must be remembered that collective oversight by the Board was of paramount priority
- The role was best achieved by the Chair being fully licensed to act as effectively as a Chair must i.e. to guide, direct and oversee change in an organisation

#### Potential Benefits and Challenges

- There was a general belief that some industry best practice processes and protocols could accrue to smaller and less resourced Boards
- Views were offered that pointed to a key benefit being gained by the CBI in identifying ‘one person’ to account for the effectiveness of the organisation
- It was agreed that an opportunity was lost by the CBI in not championing the role of the independent chairperson. There was a real consensus that the OE function could only be effective if the function of the Chair was independent and held by the INED.
- The Group agreed that there would be no value in the OE process becoming a ‘Tick Box’ exercise

#### Support for the OE Role

- The Group noted an important reference point, that the Board retained collective responsibility for the oversight of the business and the management retained responsibility for running the business

- There was a general acknowledgement that the OE role should not be seen to ‘manage designated functions’. There was a view that a resource was required to collect and collate the reports to inform the OE Director and in some cases to stress test the validity / accuracy of the data being provided.
- The availability of an initial reporting template was also accepted as a useful support
- The Group noted that a standardisation of the language used to define and frame the OE function would be a significant support

### **Content of the OE Report**

- There was a general agreement that the initial reports should focus on the 6 managerial functions as referenced in the final CP86 papers

### **Planning for Implementation**

- There was a general agreement that the CBI expected to see planning for compliance with CP86 included in the 2017 programme of activities

### **Timeframe for Implementation**

- The Group consensus pointed to a final approval date of Q 1, 2018 with full implementation by June 2018

### **Fees / Cost of OE delivery**

- The Group was clear that the director’s functions would be extended and there would be a time / cost impact. There was general agreement that any additional time charge would simply be an addition to the director’s fee

### **Does CP86 add to the profile of Ireland Inc.?**

- There was a general consensus that the new provisions had yet to demonstrate any value among industry stakeholders

## Forum 2 - Themes Discussed and Summary Findings

### Best Practice and Additional / Enhanced Board Function

- There was general agreement that the OE Role could facilitate a better governance regime, particularly for less resourced Boards
- There was a clear consensus that the role should not become a quasi-executive function
- It was also agreed that best practice standards were needed to ensure the role did not become a tick box operation
- There was a general view that in many cases the activity of the OE role was already in place
- It was agreed that there was a danger that the OE role would become over-engineered. Care would be needed to ensure that the alignment between the OE role and Designated Functions are clearly defined
- It was noted it that the oversight of the collective of the Board was of paramount importance
- It was agreed that the role was best achieved by the Chair being independent and empowered to act
- The lack of direction from the CBI was a concern. Clarity was needed on the PCF nature of the role, or not

### Potential Benefits

- There was a general belief that some industry best practice processes and protocols could accrue to less resourced Boards
- Views were offered that pointed to a key benefit being gained by the CBI in identifying 'one person'
- Concerns were raised around cases where INED might be in conflict with the Chair in carrying out the OE role. Guidelines from the CBI would be beneficial.
- There was a general view that any OE related benefits were not visible to shareholders
- It was agreed that the CBI must advocate the role of the independent chairperson. There was a real consensus that the OE function could only be effective if the function of the Chair was independent and held by the INED.
- The group noted the potential negative outcome for Ireland Inc. of attracting more costs, related to the OE role

- There was a general agreement that the initial use of an outline OE Report Template would be beneficial

### **Potential Challenges**

- The Group cautioned against the rise of 'Role Creep' and the proximity of an executive function
- Clarity was needed on the inclusion or not of Internal Audit with the OE remit
- A best practice definition of 'ongoing' review required clarification
- The group agreed that the OE role must be assessed on a case by case basis, depending on a number of criteria that might include the complexity of the business, the skill set at the Board and the life cycle of the product
- It was noted that it was not uncommon for promoters to retain the Chairperson role. This may present several challenges to an OE role charged with leading change.

### **Support for the OE Role**

- The group agreed that the Board retained collective responsibility for the oversight of the business
- For those cases where the INED was reluctant to take on the role without additional support, that support should be sourced and provided
- The group agreed that access to and adoption of a suitable template would be a useful support
- It was noted that clarity from the CBI on the functional / practical approach to the OE role would be a beneficial support.

### **Content of the OE Report**

- The group agreed that several reporting models might apply and indeed some are already in use
- There was a general agreement that the initial reports should focus on the 6 managerial functions as referenced in the final CP86 papers
- The group discussed the possible use of sub-committees of the Board being used to assess OE and compile the OE Report

- There was a general consensus that the OE role should not require the INED to be embedded in key committees, but should have access to the reporting from same

**Fees / Cost of OE delivery**

- The Group consensus was clear that the director's functions would be extended and there would be a time / cost impact
- Clarity would be required to oversee the OE costs being attributed to the AIFM / Management Company Board and the subsequent re-charge to the fund structure as part of the cost of regulatory compliance

### Forum 3 – Themes and Findings

#### Best Practice and Additional / Enhanced Board Function

- There needs be clarification that the OE role supports and is subject to collective board oversight
- There may be benefits that accrue to poorly run boards but less value to more mature and resourced organisations

#### Potential Benefits and Challenges

##### **Benefits**

- The key benefit may be to the CBI
- The OE initiative may also provide greater weight to the INED in promoting better governance standards

##### **Challenges**

- There is a need for clarity on key issues such as the executive and non-executive status of the OE role. Care is needed to ensure that the OE is not over engineered. The approach needs to be proportionate to the needs of the business/board

#### Support for the OE Role

- It should be possible to leverage the committee and reporting structures already in place. In cases where the INED is not the Chairman or indeed where the INED is reluctant to take on the OE role, the Board should be open to sourcing from outside the organisation to offer support

#### Content of the OE Report

- The content should be aligned to the 6 designated Functions. The industry would benefit from 'Outline Guidelines' and a 'Report Template'

#### Fees / Cost of OE delivery

- The time for planning for the introduction of CP86 and OE role is now. The OE role will require a greater time commitment and will need to be proportionately compensated



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