By Email to: fundspolicy@centralbank.ie

5th November 2025

Dear Sir/Madam

Subject: **IFDA Response to CP 161 Consultation (CP161)**

The **Irish Fund Directors Association** (IFDA), the representative body for individuals practising or planning to practise as independent non-executive directors within the Irish funds industry, aims to support its c.250 members and represent their interests to key industry stakeholders. IFDA promotes strong governance standards and best practices within the Irish funds industry.

IFDA welcomes CP161 in terms of updating the domestic regulatory framework and aligning it to the revised European UCITS framework.

Our submission is focused on areas where we consider that there is an impact on the role and responsibilities of independent non-executive directors. We have, therefore, not commented on the more operational areas of CP161.

On this basis, we make the follow points:

Question 9.1: Do you agree with the proposed changes to Regulation 98 of the Central Bank UCITS Regulations?

- ☐ Yes
- ☒ No

IFDA questions the need to include the proposed new wording:

"( ) A management company shall ensure that it has sufficient resources to manage and monitor the services that are provided to every UCITS that is under its management" in Regulation 98 of the Central Bank UCITS Regulations.

While we fully support the Central Bank of Ireland's ("the CBI's") objective of ensuring robust oversight and resourcing within management companies ("ManCos"), we respectfully submit that this proposed new obligation is **unnecessary and duplicative** of comprehensive requirements already in force.

We believe the existing regulatory framework is clear, robust, and already achieves the proposal's stated aim. Introducing this new text would create regulatory ambiguity rather than enhance supervisory clarity.

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Our argument is based on the following existing regulations within the **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019** (the "CBI UCITS Regulations").

1. The Proposal is Duplicative of Existing General Obligations

The proposed requirement for "sufficient resources" to "monitor... services" is already explicitly and holistically covered by the existing general requirements for ManCos in Part 11, Chapter 1.

A. Holistic Resource Requirement (Regulation 106)

The existing **Regulation 106** provides a broad, all-encompassing obligation for a ManCo to have adequate resources for all its functions, which necessarily includes the oversight of delegates.

- **Existing Text:** Regulation 106 ("Management resources") states: "A management company shall ensure that, at all times, it has **adequate management resources** to **conduct its activities effectively** and ensure compliance with the UCITS Regulations and these Regulations."

The "activities" of a ManCo fundamentally include the oversight and monitoring of all "services" provided to its UCITS. Therefore, the existing requirement to have **"adequate"** resources (a synonym for "sufficient") to conduct *all* activities effectively already covers the proposal.

B. Specific Monitoring Duty (Regulation 101)

This general resource requirement is paired with a specific, actionable duty for the ManCo's board to ensure monitoring is in place.

- **Existing Text:** Regulation 101(2)("Organisational requirements: general") states: "The board of a management company shall put in place, and ensure adherence to... (h) procedures to ensure that clear structures are in place for the **ongoing monitoring of any work that is delegated** to a third party;"

A ManCo cannot comply with its existing legal duty under Regulation 101(2)(h) without *already* possessing the "sufficient resources" that the new proposal seeks to mandate. The existing regulations are clear: Regulation 101(2)(h) establishes the *duty to monitor*, and Regulation 106 establishes the *duty to resource* that activity.

2. The Proposal Creates Unnecessary Ambiguity and Conflict

Introducing the proposed text in a new, standalone provision would create legal and practical ambiguity.

A. Ambiguity of Terminology

The proposal introduces the term **"sufficient resources"** as a seemingly new standard. However, Regulation 106 already requires **"adequate management resources"**.

- This creates immediate legal uncertainty. If "sufficient" is intended to mean the same as "adequate," the new proposal is redundant.

- If "sufficient" is intended to introduce a *different* standard, it is unclear what that new standard is, how it differs from "adequate," and how firms should demonstrate compliance with this new, undefined threshold. As an example, is it intended that ManCos should have specific numbers of staff based, e.g., on AUM, number of funds, complexity of fund structures, etc?

B. Direct Duplication of a "Passporting" Requirement

The most significant issue is that the proposed text is **functionally identical** to an existing regulation found in a different part of the rulebook: **Regulation 112(3)**.

- **Proposed Text:** "...sufficient resources to **manage and monitor the services**..."

- **Existing Regulation 112(3):** "A management company shall ensure that it has in place, and utilises, **sufficient resources** to **supervise the services** that are provided to every UCITS that is under its management."

The terms "supervise" and "manage and monitor" are synonymous in this context. However, Regulation 112(3) is located in **Chapter 2, "Management Company Passport"**, which contains specific rules for ManCos managing UCITS authorised in *other* Member States.

Lifting this text from the "Passport" chapter and placing it into the "General Requirements" chapter is confusing. The general requirements of Regulations 101 and 106 already apply to *all* ManCos (whether they passport or not). This duplication clutters the rulebook and could lead to conflicting interpretations of two identical provisions.

IFDA Recommendation

The existing framework, principally the interplay between **Regulation 101(2)(h)** and **Regulation 106**, already provides a clear and robust basis for the CBI to supervise the resourcing of ManCo oversight functions. These rules are well-understood by the industry and form the basis of existing governance structures.

The proposed new obligation adds no new supervisory power or investor protection that is not already captured. It is duplicative, potentially ambiguous, and conflicts with the existing structure of the rulebook.

We respectfully recommend that the proposed new obligation be **withdrawn**, or that the CBI further clarify what is the intended objective of the proposed amendment.

Question 9.3: Do you agree with the proposed changes to Regulation 104 of the Central Bank UCITS Regulations?

☐ Yes

☒ No

We welcome the Central Bank's proposal to amend Regulation 104(6). Clarifying that the residency requirements previously applicable to firms with a "Low" PRISM impact rating will now serve as the new minimum standard for all management companies is a positive step toward providing a clear and transparent baseline for the industry.

1. Significant Concern with Proposed New Paragraph

Our primary concern relates to the new, additional paragraph proposed on page 65 of CP161:

"() Paragraph (6) is without prejudice to the Bank's power to impose additional residency requirements pursuant to conditions imposed under the UCITS Regulations."

A. Undermines Regulatory Certainty

While we understand the Bank's desire to retain supervisory discretion, we believe this "without prejudice" clause, as currently drafted, is overly broad, "open-ended," and creates significant regulatory uncertainty.

The industry requires a clear, rules-based framework to ensure it can structure governance, appoint executive and independent non-executive directors, and plan operations with confidence.

The purpose of codifying the PRISM-based requirements in Regulation 104(6) was to provide this certainty—a clear "safe harbour" that firms could rely upon. The proposed new paragraph effectively negates this certainty. It creates a situation where a management company may fully comply with the explicit minimums set out in Regulation 104(6) for its size and scale yet still face an undefined and discretionary power from the CBI to impose "additional residency requirements".

This ambiguity is particularly problematic for new firm authorisations and for existing firms managing their governance, as it makes the "rules of the road" unclear.

B. Lack of Transparency and Guiding Criteria

The proposed text does not provide any context, criteria, or parameters for how or when the CBI would exercise this power. The consultation paper explains the intent to apply the "Low" rating as a minimum, but neither the proposal nor the explanatory text clarifies the specific circumstances that would warrant the imposition of "additional" requirements.

Firms are left to guess what factors (e.g., nature, scale, complexity, specific delegated models) might trigger this discretionary power. This lack of transparency runs counter to the goal of a clear and predictable regulatory framework.

C. Superfluous Nature of the Provision

We would argue that this new paragraph is legally superfluous. The CBI, in its capacity as the competent authority, already possesses a general power under the wider UCITS Regulations and the Central Bank (Supervision and Enforcement) Act 2013 to impose conditions on a firm's authorisation as it deems necessary for effective supervision and prudential soundness.

If this new text is merely a restatement of that existing general power, it is unnecessary and its specific placement within Regulation 104 only serves to create confusion and dilute the clarity of paragraph (6). If, however, it is intended to create a new and specific power to deviate from Regulation 104(6) on a case-by-case basis, we believe this represents a significant policy shift that requires clearer justification and, at a minimum, defined parameters.

IFDA Recommendation

Given the significant regulatory uncertainty created by this "open-ended" language, we respectfully request that the CBI **remove the proposed new paragraph**.

We are confident that the Bank's existing general supervisory powers are sufficient to address any exceptional cases where a firm's specific risk profile may warrant enhanced supervisory measures, without the need for this ambiguous new text.

Should the Bank deem it essential to retain this provision, we would strongly urge that it be amended to include specific, objective criteria. The text should be clarified to state that such additional requirements would only be imposed in exceptional circumstances, linking it directly to the firm's specific nature, scale, and complexity, and only where the minimum requirements in paragraph (6) are demonstrably insufficient to ensure effective supervision.

We trust this feedback is constructive and are available to discuss this matter further.

Yours faithfully

Valerie Bowens CIFD

On behalf of the IFDA Council