



November 2018

## Specialised Depositories Update

By way of its Markets Update of November 19, 2018, the Central Bank of Ireland (“**Central Bank**”) has made public its intention to allow for the establishment and authorisation in Ireland of depositories to very specific types of Alternative Investment Funds (“**AIFs**”).

These types of depositories are generally referred to as “Specialised Depositories” or “Real Asset Depositories”<sup>1</sup>.

This is a very welcome development, one which the funds industry has been asking for some time and one which should complement the renewed and refreshed Investment Limited Partnership fund product (expected soon). Both are central to the further growth of Ireland as a domicile for private equity and real estate funds in particular, as well as other funds investing in illiquid or less liquid assets.

### What is a Special Depository?

A Specialised Depository is one which can only act as depository to an AIF:

- which has no redemption rights exercisable during the period of 5 years from the date of the initial investments, and
- which, in accordance with its core investment policy,
  - (a) generally does not invest in assets that must be held in custody in accordance with Regulation 22(8)(a) of the AIFM Regulations<sup>2</sup>; or

<sup>1</sup> Although referred to by the Central Bank as “Real Asset Depositories” we consider that “Specialised Depository is a more appropriate term to describe these providers.

<sup>2</sup> The European Union (Alternative Investment Fund Managers) Regulations 2013

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- (b) generally invests in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Regulation 27 of the AIFM Regulations.

Although provision for Specialised Depositories is found in Regulation 22(3)(b) of the AIFM Regulations 2013, mirroring Article 21(3)(c) of AIFMD<sup>3</sup>, no provision dealing with Specialised Depositories is found in the Central Bank's AIF Rulebook. The recent Notice of Intention makes clear that the Central Bank does intend to make such provision in its AIF Rulebook in due course.

## Limited Asset Classes

Specialised Depositories will only be able to act as depositaries to a limited set of AIFs as outlined above, namely AIFs which are closed ended (no investor redemption rights) from 5 years from the date of initial investments and which, pursuant to their defined investment policy, generally invest in illiquid assets.

It is expected that this will generally result in Specialised Depositories acting in connection with private equity, secondaries, venture, infrastructure, real estate and debt/mezzanine and asset leasing AIFs, as the assets acquired through those types of fund will generally be illiquid and the structures themselves closed-ended. Specialised Depositories will not be able to service other types of funds.

The Central Bank also intends to prohibit them servicing retail AIFs, a limitation which we feel is unnecessary.

## Depositary Activities

The AIFs which a Specialised Depositary may act for will generally not invest in "financial instruments that can be held in custody". The asset classes involved will generally be "other assets".

However, circumstances will arise where the Specialised Depositary will be required to hold custody assets, such as for cash management purposes, due to an IPO strategy or private equity acquisitions of publicly held companies. It seems that the Central Bank intends to expressly limit the scenarios under which custody assets may be held by Specialised Depositories to those three.

Note that in those cases where the Specialised Depositary does hold custody assets but does not delegate safe-keeping of such custody assets to its sub-custodian in order to discharge the related liability, the Central Bank has indicated that it is minded to impose a condition of authorisation requiring that the Specialised Depositary holds sufficient financial resources to cover the value of the custody assets.

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<sup>3</sup> The Alternative Investment Fund Managers Directive 2011/61/EU

The Central Bank has also indicated that it may prohibit a Specialised Depository from providing for the safe-keeping of assets other than documents of title unless and until such time as satisfactory evidence of capacity to do so is provided to accepted by the Central Bank. Example of such other types of assets are precious metals / wine / art.

This needs to be re-considered. Such limitations do not seem necessary and, furthermore, may create confusion as to which asset classes can be safe kept by a Specialised Depository.

## Authorisation Requirements for Specialised Depositories

The Central Bank's proposed authorisation requirements for a Specialised Depository are that the Specialised Depository must:

- be authorised for custodial operations under the Investment Intermediaries Act 1995;
- satisfy the Central Bank that it has and maintains the following:
  - (a) appropriate expertise and experience to carry out the depository tasks
  - (b) sufficient resources and adequate governance / internal organisation
  - (c) ability to meet the capital requirement of €125,000 or one quarter of total expenditure, whichever is higher
  - (d) two Irish resident directors
- comply with the safe-keeping and oversight obligations which apply to depositories pursuant to the AIFM Regulations,
- comply with the following obligations set out in Chapter 5 of the AIF Rulebook:
  - (e) reporting
  - (f) business Continuity Planning
  - (g) to report annually to investors in the AIF on the management by the AIFM
  - (h) to report breaches to the Central Bank.

The Central Bank will also require applicants to possess professional indemnity insurance for loss or damage caused through the negligent performance of activities (it is likely that a pre-determined amount of cover would be required depending on the value of portfolios of the AIFs to which the Specialised Depository is appointed).

## Disclosure

The Central Bank proposes requiring a disclosure to be made investors on the status of the Specialised Depository and the limited nature of the activities and related liability which applies.

## Next Steps

The most immediate next step for interested parties is to go ahead and submit your application for authorisation as a Specialised Depository. We recommend that you prepare a Key Facts Document [here](#) as part of the initial filing.

Otherwise, particularly where you do not agree with any aspect of what the Central Bank has outlined in its Notice of Intention, you should send your comments/observations by email to [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie) no later than 19 January 2019.

For further guidance regarding the requirements, please refer to the contacts above, or to your usual contact within Dillon Eustace.

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