



**ADVISORY**  
Industry Information

## IRELAND UPDATE: Irish Regulatory Framework for Real Asset Depositaries

September 2021

In November 2018, the Central Bank of Ireland (“Central Bank”) signalled its intention to provide for a real asset depositary regime as permitted by Regulation 22(3)(b) of the European Union (Alternative Investment Fund Managers) Regulations 2013, as amended (the “AIFM Regulations”). It sought feedback from industry on the proposed regulatory framework and earlier this year issued its long awaited guidance<sup>1</sup> on the regime. Since then a number of entities have been authorised as Depositaries of Assets other than Financial Instruments or DAoFIs as real asset depositaries are referred to in the Central Bank’s guidance with other applications being considered. In this update, we highlight the key considerations for entities contemplating making an application for authorisation as a DAoFI.

### Types of funds a DAoFI may act for

A DAoFI may only be appointed to act for a specific category of alternative investment fund (“AIF”), being:

- » AIFs that have no redemption rights exercisable for at least five years from the date of initial investment and which generally do not invest in financial instruments that can be held in custody.

The Central Bank’s guidance states that a DAoFI may only be appointed to act for authorised AIFs which are qualifying investor AIFs (“QIAIFs”) and cannot act for authorised AIFs which are retail investor AIFs (“RIAIFs”). It also clarifies that a DAoFI may be authorised to act for AIFs that are not regulated by the Central Bank, providing additional guidance in respect of a DAoFI’s appointment to act for such AIFs. The categories of non-EU AIFs that a DAoFI may be appointed to act for is not restricted to the category of AIF set out above where the DAoFI is only appointed to perform cash monitoring and oversight functions.

### Types of assets that can be safe-kept by a DAoFI

While the Central Bank has advised that it does not propose to establish an exhaustive list of assets which would automatically be acceptable for a DAoFI to safe-keep, it has published the following list of asset classes which will be updated from time to time.

Art	Certain types of collective investment schemes	Physical commodities
Private equity	Forestry	Infrastructure
IP and derived income including royalties	Land	Life assurance policies
Loans	OTC derivatives	Plant and equipment
Precious stones	Real estate	Ships
Trade claims	Wine	

<sup>1</sup> In the form of guidance entitled “[Depositaries for AIFs under Regulation 22\(3\)\(b\) of the AIFM Regulations](#)” and five Q&As in the Central Bank’s [AIFMD Q&As](#) (IDs 1136, 1137, 1138, 1139 and 1143).



The Central Bank has indicated that it expects AIFs in respect of which a DAoFI acts to materially invest in physical assets which do not qualify as financial instruments or cannot be physically delivered to the depositary, with ownership of such assets typically being represented by documents of title. However such AIFs may, to a limited extent, invest in financial instruments which are the subject of custody obligations. Where this arises, there are three options open to the DAoFI:

1. delegate the custody of such financial instruments to a sub-custodian;
2. elect to put in place a guarantee; or
3. elect to hold sufficient financial resources to cover the value of the financial instruments in custody.

## Authorisation Requirements

In order to be eligible for authorisation as a DAoFI, an entity must:

- » be a company incorporated in Ireland which is authorised as an investment business firm under the Investment Intermediaries Act 1995;
- » satisfy the Central Bank in relation to its suitability (including with respect to the fitness and probity and expertise of its staff);
- » comply with the majority of the depositary requirements set out in Chapter 5 of the Central Bank's AIF rulebook including those relating to eligibility, capital<sup>2</sup> and other resources, depositary tasks, operating conditions, delegation and its relationship with the Central Bank;
- » cover potential risks of professional liability by additional own funds or appropriate professional indemnity insurance;
- » demonstrate the following to the Central Bank:
  - its capacity and ability to meet safekeeping and oversight obligations as provided for under the AIFM Regulations;
  - that it has effective policies and procedures to ensure the depositary oversight role is carried out; and
  - how it has the necessary systems access to effectively oversee the AIFM and any of its delegates, particularly those which are appointed to carry out fund administration or portfolio management.

The Central Bank expects applications to provide details of the controls, policies and procedures in place to meet these obligations.

## Disclosure requirements for AIFs

A DAoFI must ensure that any AIF in respect of which it is appointed clearly discloses to investors the regulatory status of the DAoFI, the more limited nature of its activities (when compared to the requirements of a depositary which provides so-called "full scope" activities) and the standard of liability which applies to the DAoFI.

## Next steps

This framework permits the authorisation of a category of depositary which takes into account the nature of assets held by the funds it acts for, providing less onerous depositary requirements (both in terms of liability standards and tasks to be performed) than those authorised as full scope depositaries. It complements the recent enhancements to Ireland's investment limited partnership regime and further emphasises Ireland's suitability as a private asset domicile.

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<sup>2</sup> Minimum capital requirement of (i) initial capital of at least €125,000; or (ii) one quarter of the firm's total expenditure requirement, whichever is higher.



## Key Contacts

If you have any queries relating to the authorisation process or the operating requirements that apply to a DAoFI, please contact your usual contact in Walkers or connect with:



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