



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Handbook of Prudential Requirements for Investment Intermediaries



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Part 1: Introduction

The requirements set out in this Handbook are imposed under the Investment Intermediaries Act, 1995 (“the Act”) and apply to those investment business firms which come within the meaning of an investment intermediary as defined in Part 7 of this Handbook. Please refer to Part 7 of this Handbook for the meaning of any term shown in bold throughout this text.

This Handbook is effective from 1 October 2014 and replaces the Handbook of Prudential Requirements for Authorised Advisors and Restricted Intermediaries introduced in July 2006.

1.1 Legislative Basis

The requirements set out in this Handbook are imposed on **investment intermediaries** under Section 14 of **the Act**. The **Central Bank** considers it fit and appropriate to impose such requirements on **investment intermediaries** relating to the proper and orderly regulation and supervision of such firms and the protection of investors.

It is the responsibility of each **investment intermediary** to ensure it complies with all applicable legislative requirements and all regulatory requirements imposed upon it by the **Central Bank** (e.g. Consumer Protection Code 2012; Minimum Competency Code 2011). These regulatory requirements are imposed in addition to, and without prejudice to, all other requirements imposed upon **investment intermediaries**.

1.2 Scope

The **investment business firms** to whom the requirements set out in this Handbook apply, and who are defined herein as “**investment intermediaries**”, are:

investment business firms authorised by the **Central Bank** under **the Act** to provide only the **investment business services** defined in this Handbook and **investment advice**, and who provide those **investment business services** and **investment advice** to:

- (i) **product producers**; and/ or
- (ii) non-product producers (e.g. Lloyd’s broker).

The requirements in this Handbook do not apply to **investment intermediaries** which hold a **primary authorisation**. An **investment intermediary** with a **primary authorisation** for the purpose of this Handbook means an **investment intermediary** which is also authorised under a legislative provision other than **the Act** and as a consequence of which, that **investment intermediary** is subject to more stringent capital and reporting requirements under that authorisation than those imposed under **the Act**.

1.3 Consequences of Non-Compliance

A contravention of a provision of **the Act** or of any condition or requirement imposed under a provision of **the Act**, including the requirements imposed in this Handbook, may result in, without limitation, the issuing of a direction under the Central Bank (Supervision and Enforcement) Act 2013, the imposition of an administrative sanction under Part IIIC of the Central Bank Act 1942, the revocation of an investment intermediary's authorisation.

Part 2: General Supervisory Requirements

2.1 An **investment intermediary** is required to obtain the prior approval of the **Central Bank** in advance of engaging in any new **regulated activities** including activities which may require an amendment to their existing authorisation.

2.2 An **investment intermediary** is required to notify the **Central Bank** in writing in advance of the establishment of any new branch, office or **subsidiary** and of all relevant post-authorisation changes including changes to its legal name, trading name, principal business address, telephone number, email address and website address.

2.3 An **investment intermediary** is required to notify the **Central Bank** in writing as soon as it becomes aware of any breach by it of **the Act** or of a breach of any regulatory requirements applicable to it.

2.4 All frauds perpetrated on an **investment intermediary** (including any misappropriation or use without proper authorisation of client premiums or **investment instruments**) must be reported to the **Central Bank** as soon as identified.

2.5 An **investment intermediary** must notify the **Central Bank** of all current or impending legal action being taken either by or against the **investment intermediary**. This notification should include details of the other party/parties to the legal action and the nature of the proceedings.

2.6 An **investment intermediary** that decides to cease operating as an **investment intermediary** must complete the revocation form for **investment intermediaries** (available on our website www.centralbank.ie) and submit it to the **Central Bank** immediately.

Part 3: Financial Position and Reporting Requirements

3.1 An **investment intermediary** must at all times be in a position to meet its financial obligations in full as they fall due.

3.2 An **investment intermediary** must at all times maintain a **positive net asset position**. Goodwill and other intangible assets are to be excluded from the calculation of a firm's balance sheet assets for regulatory reporting purposes¹.

3.3 An **investment intermediary** that acts as a **product producer** must have minimum shareholders' funds (or in the case of an unincorporated body of persons, a sole trader or partnership, a positive capital account) of €50,000.

3.4 **Investment intermediaries**, including unincorporated bodies of persons, sole traders and partnerships, are required to prepare annual audited accounts no later than six months after the end of the financial year-end. The audited accounts may be requested by the **Central Bank** at any time following this six month period after the **investment intermediary's** financial year-end.

3.5 An **investment intermediary** that is an unincorporated body of persons, a sole trader or partnership, shall prepare audited accounts in respect of: a) the **investment intermediary's** overall financial position i.e. all of the intermediary's activities, both regulated and unregulated; **or** b) the **investment intermediary's** investment business activities. The accounts must clearly identify which is the case.

3.6 An **investment intermediary** that is an unincorporated body of persons, a sole trader or partnership should include the following in its audited accounts:

- a profit and loss account or an income and expenditure account; and
- a balance sheet or capital account.

3.7 An **investment intermediary** that is a sole trader, partnership or an unincorporated body of persons shall supplement the audited accounts with the provision of a certificate of solvency signed by the sole trader or a separate certificate of solvency signed by each partner of a partnership or person in an unincorporated body of persons. Certificates of solvency must be in the format set out in Appendix 1.

3.8 An **investment intermediary** is required to submit, not later than six months after the end of the relevant financial year-end, an **Annual Return** via the **Central Bank's Online Reporting System** in respect of that **investment intermediary**.

¹ A transitional arrangement will apply to firms that hold qualifying goodwill (under the former Handbook) as at 30 September 2014. Such qualifying goodwill must be verified by an auditor as representing the net present value of future cash flows arising from existing investment instruments (excluding goodwill on non-life insurance business). This arrangement will allow these firms a maximum of 5 years to reduce their goodwill, with the firm's first write off being included in their financial accounts from 1 April 2015 (annual return due to be submitted by end-October 2015). Any impairment of goodwill must be written off immediately and in full. Failure to submit the firm's Annual Return on or before the due date (i.e. within 6 months of its financial year-end) will result in the firm not being able to avail of this transitional arrangement.

Information submitted on the Financial Information Section of the **Annual Return** must be based on the annual audited accounts for the financial year-end of the **investment intermediary**.

Part 4: Professional Indemnity Insurance

4.1 An **investment intermediary** shall put in place and maintain a policy of professional indemnity insurance (“PII”) covering the **investment intermediary’s** activities in accordance with paragraph 4.2 below.

4.2 The amount insured shall, at a minimum, provide cover for €1.25 million per claim and €1.85 million in aggregate per type of regulated activity i.e. investment, insurance or debt management activity within each calendar year – (these amounts may be amended in line with the 5-year reviews under Regulation 17 (3) of the Insurance Mediation Regulations, 2005).

Part 5: Organisation and Management

5.1 An **investment intermediary** shall manage its business in accordance with sound administrative and accounting principles and shall have in place, and maintain, up to date internal control and reporting arrangements and procedures to ensure that the business is managed in accordance with all applicable legislative requirements and regulatory requirements and in accordance with industry best practice².

5.2 An **investment intermediary** shall have robust governance arrangements in place including:

- a clear organisational structure with well defined, transparent and consistent lines of responsibility;
- effective processes to identify, manage, monitor and report the risks it is or might be exposed to;
- adequate internal control mechanisms to mitigate risk; and
- sound administrative and accounting procedures.

5.3 An **investment intermediary** shall have adequate levels of staff and expertise to carry out its activities in the interests of its **customers** and the proper and orderly regulation of the **investment intermediary**.

² For the avoidance of doubt, applicable legislative requirements and regulatory requirements imposed by the Central Bank will apply in the event of any conflict with industry best practice.

5.4 An **investment intermediary** shall maintain sufficient compliance and internal audit arrangements to ensure that it complies with all applicable legislative requirements and regulatory requirements imposed on it and to that end, it shall ensure that:

- it has compliance and audit staff with the necessary authority, resources, expertise and access to all relevant information, with regard to the **investment intermediary's** compliance, operational and financial risks;
- responsibility for compliance and audit activities are clearly assigned;
- the duties and responsibilities of those with responsibility for compliance and audit activities are clearly defined and documented; and
- the proposed reporting lines/functional relationships between employees with compliance and audit responsibilities and the **investment intermediary's** senior management and where relevant, board of directors, are clearly defined.

An **investment intermediary** shall notify the **Central Bank** in advance where it proposes to outsource any **important operational function**.

5.5 An **investment intermediary** shall do the following:

- establish accounting policies and procedures which enable it, at the request of the **Central Bank**, to deliver in a timely manner to the **Central Bank**, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules;
- have sufficient resources to effectively conduct its business within the applicable legislative requirements and regulatory requirements;
- on an on-going basis, be aware of and monitor all risks to its business and maintain adequate technical, organisational and procedural safeguards; and
- establish, implement and maintain systems and procedures that are adequate to safeguard the confidentiality, integrity and availability of information.

5.6 An **investment intermediary** must establish, document and maintain effective business continuity and disaster recovery procedures.

5.7 An **investment intermediary** must maintain records evidencing its compliance with the requirements in this Handbook and such records are required to be retained for six years.

Part 6: Books and Records

6.1 An **investment intermediary** shall retain, in a readily accessible form and for a period of at least six years from the date of the **transaction**, a full record of each **transaction** entered into by it and all records required to demonstrate compliance with applicable legislative requirements and regulatory requirements.

6.2 An **investment intermediary** shall put in place a service level agreement with any person or firm to whom it proposes to outsource all or part of its record-keeping obligations. An **investment intermediary** must ensure that any such service level agreement does not conflict with any of its obligations under applicable legislative requirements or regulatory requirements. Notwithstanding any such arrangement, an **investment intermediary** shall remain responsible for compliance with the provisions of this Handbook and all applicable legislative requirements and regulatory requirements imposed on the **investment intermediary**.

6.3 An **investment intermediary** must have adequate procedures in place for the maintenance, security, privacy and preservation of records and working papers belonging to the **investment intermediary** or its **customers** so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.

6.4 An **investment intermediary** shall ensure that its records contain, at a minimum, any record referred to elsewhere in this Handbook.

6.5 In addition, an **investment intermediary** that is also a **product producer** must maintain details of the legal relationship, including letters of appointment, between it and any **investment intermediary** that it has appointed together with details of the enquiries made in accordance with **the Act** by the **investment intermediary** prior to issuing each letter of appointment.

Part 7: Definitions

“the Act” means the Investment Intermediaries Act, 1995 (as amended);

“Annual Return” refers to the information to be provided to the **Central Bank** including information relating to financial, ownership and conduct of business on an annual basis in a form specified by the **Central Bank** through the **Online Reporting System** or such other system as may amend or replace the Online Reporting System.;

“the Central Bank” means the Central Bank of Ireland;

“customer” means any person to whom the **investment intermediary** provides or offers to provide an **investment business service** or **investment advice** and any person who requests such a service or advice;

“important operational function” an operational function is an **important operational function** if a defect or failure in its performance would materially impair –

- a) the continuing compliance of the **investment intermediary** concerned with all applicable legislative requirements or regulatory requirements;
- b) its financial performance; or
- c) the soundness or continuity of its **investment business services** and/or **investment advice**;

“investment advice” has the meaning specified in Section 2 of **the Act** only in so far as it relates to the **investment instruments** as defined in this Handbook;

“investment business firm” has the meaning specified in Section 2 of **the Act**;

“investment business service” means, for the purpose of this Handbook,

- a) receiving and transmitting, on behalf of **customers**, orders in relation to one or more **investment instrument**; or
- b) acting as a deposit agent or deposit broker, as defined in Section 2 of **the Act**

“investment instrument” means, for the purpose of this Handbook, the investment instruments set out in Section 26(1)(a)(i) of **the Act** (i.e. collective investment scheme instruments, shares in a company that is listed on a stock exchange, bonds that are listed on a stock exchange, prize bonds, tracker bonds, insurance policies, or personal retirement savings accounts within the meaning of the Pensions Act 1990);

“investment intermediary” (or “investment intermediaries”) means, for the purpose of this Handbook:

an **investment business firm** authorised by the **Central Bank** under **the Act** to provide only the **investment business services** defined in this Handbook and **investment advice** to:

- (i) **product producers**; and/or
- (ii) non-product producers (e.g. Lloyd’s broker);

“Online Reporting System” is a secure web based system through which the **Central Bank** requires regulated financial service providers (including **investment intermediaries**) to submit data relevant to their businesses, at specified intervals;

“partner” means a **person** who has been admitted as a partner in an **investment intermediary**;

“person” means any partnership, body corporate or unincorporated body of persons wherever constituted or established or any individual;

“positive net asset position” means total assets less goodwill and other intangible assets less total liabilities

“primary authorisation” means an authorisation or licence issued by the **Central Bank** and under which an investment **intermediary** is subject to more stringent capital and reporting requirements than those imposed under **the Act**. For example, an **investment intermediary** which is a MiFID firm* that also has an authorisation under **the Act** is subject to regulatory capital requirements which are in excess of those imposed under this Handbook. A primary authorisation exemption would not apply where the regulatory and reporting requirements under that authorisation were equal or lesser than those imposed under this Handbook. By way of example, an **investment intermediary** may also hold an authorisation as a Debt Management firm – the exemption would not apply in this case, as the prudential requirements for Debt Management firms are similar to the requirements for **investment intermediaries**;

*Authorised under Regulation 11 of the European Communities (Markets in Financial Instruments) Regulations, 2007 and Commission Regulation (EC) No.1287/2006 of 10 August 2006.

“product producer” has the meaning specified in Section 2 of **the Act**. For the purposes of this Handbook, this also includes **investment intermediaries** which appoint other intermediaries i.e. act as a “wholesale broker.”

“regulated activities” are the products or services provided by an **investment intermediary** which are subject to the regulation of the **Central Bank**;

“subsidiary” for the purpose of this Handbook means a legal entity that is directly or indirectly owned (either partially or wholly) by the **investment intermediary**;

“transaction” means the provision of **investment business services** or **investment advice**;

References to “books”, “records” or other “documents”, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which is capable of being reproduced in a legible form and all electronic or other automatic means, if any, by which such document or information is so capable of being reproduced and to which the **investment intermediary** has access.

Appendix 1: Certificate of Solvency

CERTIFICATE OF SOLVENCY

I certify that at this time, to the best of my knowledge and belief, and having made reasonable enquiry, the total of my assets exceeds the total of my liabilities, and that I am able to meet those liabilities as they fall due. I am currently not aware of any circumstances that would cause this position to change within the next twelve months.

I acknowledge that if this statement is found to be false, inaccurate or misleading in any respect, I may be guilty of an offence under Section 79 of the Investment Intermediaries Act, 1995, as amended.

I also undertake to notify the Central Bank of Ireland immediately if at any time my financial circumstances change to an extent that would render me unable to complete this Certificate.

Signed _____

Sole Trader/Partner

Date _____

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