



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

## Enforcement Action

Central Bank of Ireland

and

BVP Investments Limited

### **BVP Investments Limited fined €6,000 and reprimanded by the Central Bank of Ireland for holding client assets in breach of its authorisation**

On 21 October 2019, the Central Bank of Ireland (the **Central Bank**) fined BVP Investments Limited (the **Firm** or **BVP**) €6,000 and reprimanded it for breaching a condition imposed on its authorisation by holding client assets. The breach has been admitted by the Firm.

At various times over the course of almost 12 years between November 2007 and August 2019 the Firm, as a matter of practice, held client assets in full knowledge that it was prohibited from doing so by a condition of its authorisation.

The Central Bank had regard to section 33AS(1) of the Central Bank Act, 1942 (as amended) (the **Act**), and had it not been for the financial position of the Firm and its obligation to meet its capital adequacy requirements, the Central Bank would have imposed a financial penalty of €80,000 (reduced by 30% to €56,000 in accordance with the settlement discount scheme provided for in the Central Bank's Administrative Sanctions Procedure).

BVP's authorisation contains an explicit condition stating that it is not permitted to hold client money or investment instruments. Immediately after obtaining its authorisation in 2007, and with full knowledge of the condition, BVP began holding and processing client funds through its corporate bank accounts. As a consequence of the Firm's breach, significant amounts of client funds were co-mingled with the Firm's own funds in the Firm's corporate bank accounts. In addition, on a number of occasions, BVP held client financial instruments, also in breach of the condition of its authorisation. The aggregate amount of client funds held by the Firm over the

duration of the breach was almost €16 million, with the highest amount at any one time being over €1.5 million.

Seána Cunningham, the Central Bank's Director of Enforcement and Anti-Money Laundering, has commented as follows:

*"The Central Bank requires regulated financial service providers to undertake only those activities specified in their authorisation and considers it unacceptable where firms breach the conditions, or any relevant regulatory requirements, which underpin that authorisation.*

*While the Central Bank found no evidence of loss or misappropriation of client assets, BVP's actions exposed those client assets to a risk of loss, misuse or delay in the return of assets to clients in circumstances where they were not readily identifiable and appropriately ring-fenced.*

*BVP's actions in breaching an important condition of its authorisation, are unacceptable to the Central Bank.*

*Compliance with conditions of authorisation is not optional. The Central Bank requires all regulated financial service providers to ensure that they are, at all times, in compliance with their authorisation in the conduct of their business. Failure to do so will result in robust action by the Central Bank, including investigation and enforcement action."*

## **BACKGROUND**

The Firm was authorised under the Investment Intermediaries Act, 1995 (the **IIA**) on 15 November 2007. Under its IIA authorisation, the Firm is authorised to provide services to "Designated Investment Funds". The Firm is explicitly not permitted by the Central Bank to hold client assets. BVP is a Low Impact firm under the Central Bank's Probability Risk and Impact System of supervision (**PRISM**). BVP's audited accounts for year ended 31 December 2018 show a turnover of €745,490.

The Firm's primary activities relate to the promotion and administration of funds for investments under Revenue's Employment and Investment Incentives Scheme (**EII**). Prior to the establishment of the EII scheme in 2011, the Firm undertook the same activity for investments under Revenue's Business Expansion Scheme (**BES**), which has since been phased out. Both EII and BES are tax relief incentive schemes, which allow investors to claim tax relief for investments in certain qualifying companies.

The Firm raises and manages funds under Part 16 of the Taxes Consolidation Act, 1997 (as amended), which allows for designated investment funds (the **Designated Funds**) to invest in qualifying companies on behalf of eligible investors. The Firm has, since authorisation, acted as the administrator and investment manager for 12 Designated Funds.

There are three steps in the life cycle of the Designated Funds operated by the Firm:

1. During the subscription period, clients make an investment by submitting an application form and the required documentation to the Firm, together with a cheque payable to the trustee company (the **Trustee**), or by making a payment directly to the Trustee by way of electronic transfer. All of these investments together make up the Designated Fund.
2. When a Designated Fund is closed for subscription, the investment committee of the Firm makes decisions as to what investments will be made by the Designated Fund. This is the placing of the investment. The funds to be invested in the qualifying companies are transferred from the Trustee to the qualifying companies selected by the Firm, following which, the Trustee is issued with share certificates which are kept in its custody for the term of the investment.
3. When the investment is liquidated at the end of the term of investment, the proceeds are paid by the qualifying company to the Trustee who then makes onward distributions to the clients.

## **PRESCRIBED CONTRAVENTION**

### **Failing to act in compliance with a condition imposed on the Firm's authorisation.**

The Firm failed to comply with an explicit condition of its authorisation, imposed pursuant to Section 10(12)(b) of the IIA, thereby committing a prescribed contravention for the purposes of Part IIIC of the Act. The condition states as follows:

*"The firm will not hold client money or investment instruments."*

The investigation found that the breach commenced when the Firm was closing its first Designated Fund, which was within 6 weeks of the Firm receiving its authorisation from the Central Bank.

The breach occurred at various times over the course of almost 12 years. As BVP is a Low Impact firm, it is subject to reactive supervision by the Central Bank. The breach was brought to light when the Firm requested a newly recruited employee with compliance experience to carry out a general review of its processes and procedures in early 2017.

In transacting and holding client assets in this way, the Firm acted with deliberate disregard to the purpose and importance of the condition of its authorisation which provided that it is not permitted to hold client money or investment instruments.

Client funds were held in the Firm's corporate bank accounts, and were co-mingled with the Firm's own funds, in the following three specific scenarios:

1. client cheques, which were made payable to the Firm, and were received by the Firm for the purpose of investment in an EII or BES designated investment, were deposited to the Firm's corporate bank accounts before the Firm transferred the funds to the appropriate trustee account. The total amount of client funds held by the Firm in these circumstances in the period November 2007 to August 2017 was €2,824,503. The average duration of client funds held in this scenario was 20 days. The longest single instance of client funds held in this scenario was 63 days and the highest amount at any one time was €494,040;
2. the Firm held client funds in its own corporate bank accounts, transferred from the appropriate trustee account, prior to the Firm transferring the funds on to the qualifying companies, to facilitate or expedite the closing of investments in qualifying companies on behalf of the relevant EII or BES fund. The total amount of client funds held by the Firm in these circumstances in the period November 2007 to August 2017 was €10,589,354. The average duration of client funds held in this scenario was 16 days. The longest single instance of client funds held in this scenario was 136 days and the highest amount at any one time was €860,872; and
3. the Firm received and held client funds, being the proceeds of the realisation of underlying investments in qualifying companies before ultimately distributing the proceeds to clients. The total amount of client funds held by the Firm in these circumstances in the period November 2007 to August 2017 was €2,436,700 and the highest amount at any one time was €1,558,056.

In addition to the above, the investigation found that the Firm had, on a number of occasions, held share certificates (client financial instruments) in the qualifying companies for a period of time before transferring them to the relevant Trustee, and on one occasion a share certificate, which should have been registered in the name of a Trustee, was incorrectly registered in the name of a nominee of the Firm on 30 December 2016. The Central Bank issued a Direction

under Section 45(1) of the Central Bank (Supervision and Enforcement) Act, 2013 to compel the Firm to correct the registration of the share certificate, and this was complied with by the Firm in August 2019.

## **EFFECT OF THE BREACH**

The Firm failed to comply with its authorisation under the IIA, by holding client assets. This action placed these client assets at risk of:

- Loss, particularly in the event of an insolvency;
- Misuse (inadvertent or otherwise) by the Firm; and
- Delay in identification in their return to clients.

The investigation found no evidence of misappropriation or loss of client assets by the Firm.

## **REMEDIATION**

The Central Bank is satisfied that the Firm has ceased holding client assets in respect of EII/ BES investments, and the incorrectly registered share certificate is now registered in the name of the Trustee.

## **PENALTY DECISION FACTORS**

In deciding the appropriate penalty to impose, the Central Bank considered the following matters:

- The nature and seriousness of the breach. It relates to a fundamental regulatory requirement – that a regulated financial services provider acts in accordance with the conditions imposed by the Central Bank on its authorisation.
- The risk of loss or detriment the breach posed to investors.
- The need for an effective deterrent impact on the Firm and other regulated entities.
- The financial position of the Firm and the need to impose a proportionate level of penalty.

## **AGGRAVATING FACTORS**

- The Firm deliberately acted in breach of its authorisation.

- The extended period of time over which the breach occurred, for almost 12 years from November 2007 to August 2019.

#### **MITIGATING FACTORS**

- The Firm made full admissions at the earliest opportunity in the process. This permitted the Central Bank to make time, cost and resource savings.

The Central Bank confirms its investigation into the Firm in respect of this matter is closed.

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## NOTES TO EDITORS

1. The Investment Intermediaries Act, 1995 is available to download [here](#).
2. The fine imposed by the Central Bank was imposed under Section 33AQ of the Central Bank Act, 1942. The maximum penalty under Section 33AQ is €10,000,000, or an amount equal to 10% of the annual turnover of a regulated financial service provider, whichever is the greater. The Central Bank had regard to section 33AS(1) of the Central Bank Act, 1942. This states: *"if the Bank decides to impose a monetary penalty on a regulated financial service provider under Section 33AQ or 33AR, it may not impose an amount that would be likely to cause the financial service provider to cease business"*.
3. The fine that the Central Bank would have been imposed but for Section 33AS(1) reflects the application of the maximum percentage settlement discount of 30%, as per the Early Settlement Discount Scheme set out in the Central Bank's "Outline of the Administrative Sanctions Procedure 2018" which is [here](#).
4. Funds collected from penalties are included in the Central Bank's Surplus Income, which is payable directly to the Exchequer, following approval of the Statement of Accounts. The penalties are not included in general Central Bank revenue.
5. EII is a tax relief incentive scheme established by the Office of the Revenue Commissioners (**Revenue**) that provides tax relief on investments in certain qualifying companies. Prior to the establishment of the EII, Revenue operated the BES which operated in a similar manner. BES was phased out in 2011 after the EII was established.
6. Under the Central Bank's PRISM system of supervision, BVP is classified as a Low Impact firm. Low Impact firms are subject to reactive supervision and a policy of enforcement where they fail to meet appropriate prudential and consumer protection standards. PRISM Explained – How the Central Bank of Ireland is Implementing Risk-Based Regulation is available to download [here](#).
7. The Client Asset Requirements 2007 issued under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) were replaced on 1 October 2015 by the Client Asset Regulations (the **CAR 2015**). The CAR 2015 were subsequently replaced on 3 January 2018 by the Client Asset Requirements, contained

within Part 6 of the Central Bank (Supervision and Enforcement) Act, 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017) (the **CAR 2017**), which are available for download [here](#). Regulation 49(9) of the CAR 2017 provides that an investment firm shall not hold client assets without the prior written approval of the Central Bank. Client funds and client financial instruments are defined in the CAR 2017.

8. This is the Central Bank's 132<sup>nd</sup> settlement since 2006 under its Administrative Sanctions Procedure, bringing total fines imposed by the Central Bank to over €99 million.