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## **IBF RESPONSE TO CONSULTATION PAPER (CP 78) ON CARRYING OUT DEPOSITARY DUTIES IN ACCORDANCE WITH ARTICLE 36 OF THE AIFMD**

**MAY 2014**

The Irish Banking Federation (IBF) is the leading representative body for the banking and financial services sector in Ireland. Our membership comprises banks and financial services institutions both domestic and international operating in Ireland. Our purpose is to foster the development of a stable banking and financial services sector that contributes to the economic and social well-being of the country. Retail banks and building societies serve personal and business customers in Ireland. They provide a safe choice for savings and deposits and enable customers to plan for a stable financial future. IBF members provide a competitive range of products which enable Irish consumers to achieve home ownership, manage their money, fund their lifestyle choices and build financial strength.

Wholesale banks and financial services operations provide corporate, investment, treasury, capital markets and international financial services. Wholesale banks are represented by the Federation of International Banks in Ireland (FIBI), which is affiliated to IBF. FIBI members include 25 of the 50 largest banks in the world.

The IBF welcomes the Central Bank's Consultation Paper "Consultation on carrying out depositary duties in accordance with Article 36 of the AIFMD" (Consultation Paper CP 78). The consultation paper asks what requirements should apply to manage conflicts of interest where a fund administrator proposes to both provide administration services and perform the depositary duties set out in Articles 21(7) and 21(9), for the same non-EU AIF. It is proposed to include the following requirements in Chapter 5 – Fund Administrator Requirements - of the AIF Rulebook:

Where a Fund Administrator provides both administration services and any of the services listed in Regulation 22(7) and/or 22(9) of the AIFM Regulations ('depositary services') to the same non-EU AIF, it shall:

1. Functionally and hierarchically separate the depositary services and the administration services by carrying out the depositary services through a separate subsidiary;
2. Require the individual responsible for managing the subsidiary to report directly to an individual at PCF level within the parent fund administrator; and
3. Advise the Central Bank of the reporting structure which it has put in place.

Our members stress the importance of consistent and timely implementation of international standards for effective regulation in order to promote Ireland as a location for banking operations across the regulatory landscape. Recital 68 of Directive 2011/65/EU ("AIFMD"), states the need to "further enhance consistency in supervisory outcomes" and we would encourage the Central Bank of Ireland to ensure that requirements imposed on Irish operations in accordance with Article 36 of AIFMD are consistent with the requirements imposed by other European competent authorities. It is essential that our regulatory environment with respect to "modular depositary light" services does not place our members at a domestic disadvantage over other jurisdictions.

Following engaging with the members of Depository WG our feedback on the consultation would be as follows:

The consultation suggests that only those firms holding the relevant authorisation under the IIA may perform the services concerned under Article 21 (8). However an Irish entity may also provide the services where it is authorised under the relevant provisions of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992, Central Bank Act 1971, or the European Communities (Markets in Financial Instruments) Regulations 2007. There are three categories of authorisation beyond the IIA which, where held, would allow an entity to provide depository services.

It is outlined within CP78 that the performance of the activities outlined in Article 21(8) (a) and (b) require authorisation under the terms of the IIA. As outlined above, with respect to Article 21(8)(a) activities this is not accurate given the other categories of authorisation which may permit such an activity. Also consideration regarding the term "safekeeping" for the purposes of Article 21(8) of AIFMD should not be read as being synonymous with that of "safekeeping and administration", as outlined in the IIA.

AIFMD "safekeeping" of "non custodised" assets is a different activity to that regulated through the relevant part of the IIA and as such where an entity undertakes "safekeeping" of "other assets" which are not "investment instruments" for the purposes of the IIA, no authorisation would be required under the terms of the IIA.

The record-keeping tasks within Article 21(8)(b) safekeeping is already performed by a fund administrator pursuant to its authorisation under the IIA. In addition, reconciliation processes requirements imposed by Article 21(7) are not new and already exist within the current fund administration industry in Ireland. The cash flow monitoring required under Article 21(7) and ownership verification under 21(8)(b) sets out some additional obligations and a more prescriptive approach to the function already being applied in the calculation of the net asset value by the fund administrator. As such the management of any potential conflicts of interest arising from a fund administrator providing Article 21(7) or Article 21(8)(b) is already reflected to a large extent within the existing policies and procedures adopted by fund administration companies and a minor adjustment to these policies will ensure such conflicts are managed appropriately.

In relation to Article 21(9) depository duties, it is clear that there would need to be functional and hierarchical separation of duties to mitigate conflicts of interest if an administrator was appointed to provide the oversight functions for an AIF. Therefore, the Central Bank proposal to reduce potential for Conflicts of Interest through the requirement that this risk is mitigated by way of a separate subsidiary and reporting lines has merit and should be considered but we would be of the view that this particular function is best performed by a depository who is already independent of the administrator and who performs the relevant activities as a core business function.

In summary, we are of the view that a suitable outcome would be that the requirements imposed by Article 21(7) and 21(8)(b) could be performed within the existing fund administration company with additional controls and procedures implemented to mitigate any conflicts of interest and that those imposed by Article 21(9) could be performed by a separate entity such as an independent subsidiary or depositary.

We would like to thank the Central Bank for this opportunity to relay our member's views on this Consultation Paper. I invite you to contact me if you require any additional information or if we can assist you in any way to engage with our members.

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