Grant Thornton

Alternative Investment Fund Managers Directive: European Commission proposal

The European Commission has published its proposal to revise the Alternative Investment Fund Managers Directive (AIFMD) as part of the EU Capital Markets Union package.

The proposal includes changes to delegation arrangements, liquidity risk management, supervisory reporting, provision of depository and custody services and loan origination.

The European Commission intends that this proposal will also impact UCITS Mancos and UCITS funds. The revisions will harmonise the rules between AIFMD and the UCITS Directive in relation to delegation, liquidity risk managements and data reporting.

There will be significant debate at European level in the next 12 – 18 months. A political agreement is expected to be reached between the European Council and the European Parliament mid to end 2022. The revisions to AIFMD could be in force in early-mid 2023 with their application happening in 2025.

Delegation arrangements

- Delegation of both portfolio and risk management is expected to continue.
- AIFMs may delegate more portfolio management or risk management than they retain.
- AIFMs must employ or commit at least two natural persons who are resident in the European Union on a full time basis.
- Delegation to third countries will be subject to increased reporting and supervisory engagement whereby the Central Bank of Ireland will have to send annual notifications of delegation arrangements where more risk management or portfolio management is delegated to a third country entity than is retained.
- European Securities and Markets Authority (ESMA) is empowered to conduct peer reviews every two years to monitor the application of the delegation requirements with respect to third country delegation.
- Sub-delegation is explicitly banned to non-authorised entities.
- The European Commission shall initiate a review of the delegation regime five years after the entry into force of the AIFM Directive, with advice from ESMA on the effectiveness of the regime.

Securitisation special purpose entities

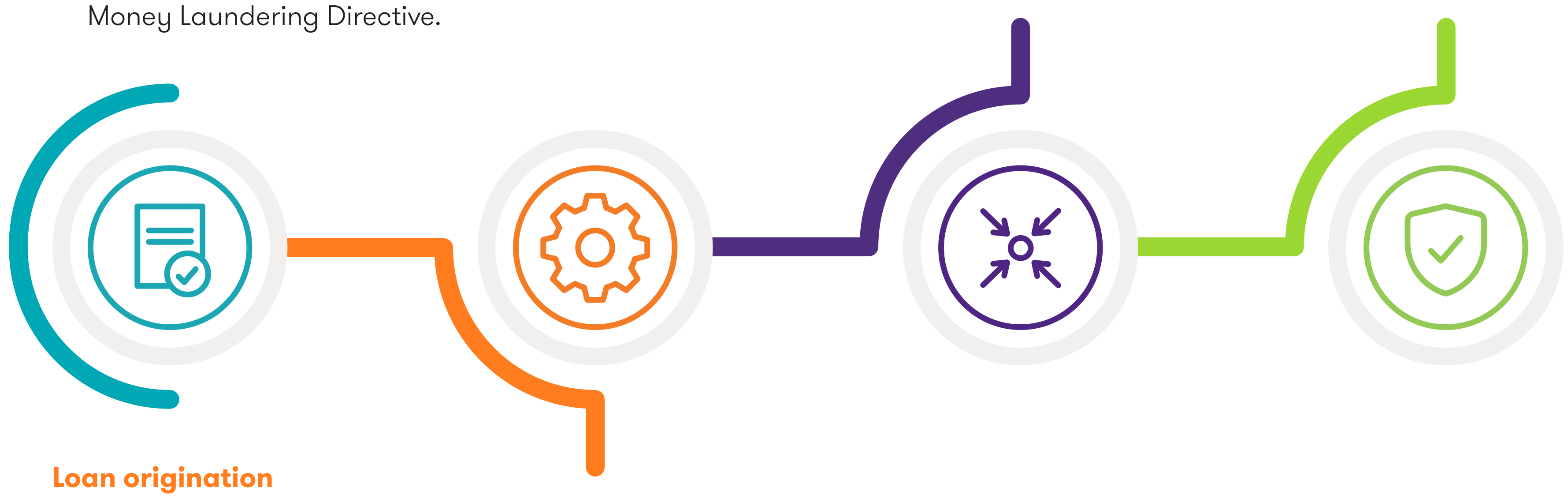
- AIFMs are specifically permitted to service securitisation special purpose entities.

Depositary

- A depositary passport is not proposed.
- The Central Bank of Ireland will allow depositary services to be procured in other member states until the introduction of a depositary passport.
- For depositaries established in a third country, these should not be established in a non-cooperative jurisdiction as defined by the European Union Council from a tax perspective or a high risk country pursuant to the Anti Money Laundering Directive.

Central securities depositories

- Central Securities Depositories are brought into the custody chain where they are providing competing custody services to ensure that depositaries have access to the information needed to carry out their duties.



Liquidity risk management

- Fund managers of open-ended AIFs/UCITS to be permitted to temporarily suspend the repurchase or redemption of fund units or shares in situations of market stress.
- Managers would be required to select at least one other liquidity management tool from a new defined list that would need to be included in the fund rules or the instruments of incorporation of the AIFM.
- Funds can select from suspension of redemption and subscriptions, gates, notice periods, redemption fees, swing pricing, anti-dilution levies, redemption in kind and side pockets.
- Managers would be required to notify the Central Bank of Ireland when activating or deactivating liquidity management tools.
- Possibility for the Central Bank of Ireland to force the activation or deactivation of liquidity management tools, not limited to those in the fund rules or instruments of incorporation (covers non-EU AIFMs also).

Loan origination

- Loan origination is listed as a regulated activity that AIFMs should be permitted to engage in as per AIFMD Annex I.
- AIFs to adopt a closed-end structure where they engage in loan origination where the notional value of originated loans exceeds 60% of its net asset value.
- AIFs to retain an economic interest of 5% of the notional value of the loans they have granted and sold off in order to avoid moral hazard situations where the loans are originated to be immediately sold off on the secondary market.
- AIF restricted from granting loans to its AIFM (or its staff), its depositary or delegate.
- 20% limit for a single borrower.

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