



Citco Bank Nederland N.V.  
Dublin & Luxembourg Branches

**Article 38(6) CSDR Participant Disclosure**

May 2021

**CITCO**

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## 1. Introduction

The purpose of this document is to disclose the levels of protection associated with the different types of accounts that Citco Bank Nederland N.V. Dublin Branch or Citco Bank Nederland N.V. Luxembourg Branch (“**Citco Bank**”) can provide in respect of securities held directly for clients with Central Securities Depositories, located within the European Economic Area (**EEA**) (**CSDs**), including a description of the main legal implications of the respective levels of segregation offered and information on the insolvency law applicable.

This document should be read in conjunction with the cost disclosure annexed to this document. This disclosure is required under Article 38(6) of the Central Securities Depositories Regulation (**CSDR**).

Under CSDR, the CSDs of which we are a direct participant (see Glossary) have their own disclosure obligations and may make their own disclosures from time to time.

This document is not intended to constitute legal or other advice and should not be relied upon as such. Clients should seek their own legal advice if they require any guidance on the matters discussed in this document.

## 2. Background

In our own books and records, Citco Bank records each client’s individual entitlement to securities that Citco Bank holds for that client in a segregated client account. We also open accounts with CSDs in our own (or in our nominee’s) name in which we hold client securities. Under CSDR, Citco Bank is required to make two types of accounts with CSDs available to clients: 1) an Individual Client Segregated Accounts (**ISAs**) and 2) an Omnibus Client Segregated Accounts (**OSAs**).

An ISA is used to hold the securities of a single client only and therefore the client’s securities are held separately from the securities of other clients and Citco Bank’s own securities<sup>1</sup>.

An OSA is used to hold the securities of a number of clients on a collective basis. However, we do not hold our own proprietary securities in OSAs.

## 3. Main legal implications of levels of segregation under Dutch law

### Insolvency

A client’s legal entitlement to the securities that Citco Bank (or its nominee) holds for them directly with CSDs, whether in an ISA or OSA, would not be affected by Citco Bank’s insolvency.

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<sup>1</sup> Although an ISA may be named in a way that identifies the client for whom it is maintained, the client does not have any right or ability to instruct the CSD with respect to any ISA maintained on its behalf or the securities maintained in that account, and so holding securities in an ISA does not give a client any operational rights with respect to those assets.

If Citco Bank were to become insolvent, its insolvency proceedings would take place in the Netherlands and be governed by Dutch insolvency law.

### **Client's legal entitlements**

Under Dutch law, securities that Citco Bank holds on behalf of clients are held by a nominee. The nominee holds such securities for the benefit of the clients. Securities held by the nominee will therefore not form part of Citco Bank's estate on insolvency for distribution to creditors. Rather, they would be available to clients in accordance with each client's entitlements in the securities as recorded in Citco Bank's books and records.

### **Insolvency**

Citco Bank is subject to strict requirements as to the maintenance of accurate books and records and the reconciliation of our records against those of the CSDs with which securities are held. Accordingly, as long as Citco Bank (or its nominee) maintains sufficient holdings of securities in accordance with its regulatory obligations, clients should receive the same level of protection in Citco Bank's insolvency or resolution, regardless of whether an ISA or an OSA is used to hold such securities. In both cases, clients will be protected in the event of Citco Bank's insolvency or resolution.

### **Shortfall**

As described above, the regulatory requirements are designated to ensure that Citco Bank holds securities in a quantity and of a kind at least equal to which clients are entitled to. If notwithstanding these requirements a shortfall were to occur between the amount of securities to which clients are entitled to and the amount of securities that Citco Bank (or its nominee) holds on their behalf (for instance as a result of an administrative error or operational issue), this could result in fewer securities than clients are entitled to being returned to them on Citco Bank's insolvency or resolution.

Where an OSA structure is used, this increases the risks to clients holding securities in the OSA as potentially it is more likely that a shortfall in the account could arise as a result of the relevant client failing to meet its obligation to reimburse the OSA for the securities used.

The terms governing the use of the nominee, contain an arrangement for the treatment of such shortfalls. This arrangement will be relevant for the distribution of securities held by Citco Bank's nominee among clients entitled to such securities on Citco Bank's insolvency or resolution. In the case of a shortfall of securities, the shortfall would be shared among all clients proportionately to their entitlement to the relevant securities. The way in which a shortfall would be treated will be the same for all securities held by Citco Bank's nominee, regardless whether an ISA, OSA or another type of segregated account is used to hold such securities. Even if a particular client could "trace" or otherwise identify securities corresponding to its entitlement, an ISA would not entitle such a client to receive those securities; such client would be subject to the same losses sharing arrangement as all other clients of Citco Bank.

### **Treatment of a shortfall**

Where securities held by Citco Bank's nominee are to be distributed among clients on Citco Bank's insolvency or resolution, the insolvency practitioner or resolution authority may require a full reconciliation of the books and records in respect of all securities accounts prior to the release of any securities to the clients. In such a case, an ISA may contribute to swifter identification of client securities, although this does not mean that securities will be

released more quickly. While insolvency practitioners and resolution authorities are required to apply the loss sharing arrangements and consider the interests of other accountholders, it may still be a complex and time-consuming process to confirm each client's entitlement to the securities available for distribution.

## Security interests

### Security interest granted to a third party

Security interests granted over clients' securities could have a different impact in the case of ISAs and OSAs.

Where a client has granted a security interest over its interest in securities held in an OSA and the security interest was asserted against the CSD with which the account was held, there could be a delay in the return of securities to all clients holding securities in the relevant OSA, including those clients who had not granted a security interest, and a possible shortfall in the account. However, in practice, we would expect that the beneficiary of a security interest over a client's securities would perfect its security by notifying us rather than the relevant CSD and would seek to enforce the security against us rather than against such CSD, with which it has no relationship. We would also expect CSDs to refuse to recognise a claim asserted by anyone other than ourselves as account holder.

## 4. CSD Disclosures

This document does not relate to an insolvency of a CSD or other proceedings in any jurisdiction affecting the rights of creditors of a CSD. Certain disclosures prepared by CSDs can be found at the websites of the relevant CSD or on the European Central Securities Depositories Association (ECSDA) website.

We have not investigated or performed due diligence on the disclosures and clients rely on the CSD disclosures at their own risk

## 5. Cost information

Annexed to this document is a high-level overview of the costs associated with the two account types described in this document.

## GLOSSARY

**Bail-in** refers to the process under the Bank Recovery and Resolution Directive (BRRD) 2014/49/EU and supplementary regulations, under which the firm's liabilities to clients may be modified, for example by being written down or converted into equity.

**Central Securities Depository** or **CSD** is an entity, which records legal entitlements to dematerialised securities and operates a system for the settlement of transactions in those securities.

**Central Securities Depositories Regulation** or **CSDR** refers to EU Regulation 909/2014, which sets out rules applicable to CSDs and their participants.

**Direct participant** means an entity that holds securities in an account with a CSD and is responsible for settling transactions in securities that take place within a CSD. A direct participant should be distinguished from an indirect participant, which is an entity, such as a global custodian, which appoints a direct participant to hold securities for it with a CSD.

**EEA** means the European Economic Area

**Resolution proceedings** are proceedings for the resolution of failing Irish banks and investment firms under the BRRD.

## ANNEX

### Cost overview

The following factors will determine the costs associated with setting up and maintaining an account at the CSD level:

- Type of Account i.e. OSA or ISA
- The number of CSDs at which you require an account
- The number of accounts you require at each CSD
- The initial setup and maintenance fees charged by the individual CSD(s) for individual accounts
- Migration costs if migrating from an existing OSA to an ISA setup.
- Incremental operational overheads incurred through the operation of potentially multiple individual accounts.
- Potential additional ongoing running costs for ISA accounts.

### CSD Costs

We expect that the charges for ISAs are likely to be higher than for OSAs as the costs associated with setting up and running an ISA will be borne by an individual client. Conversely, the charges associated with setting up and running an OSA are expected to be lower as they will be equally shared amongst all clients holding securities in the account.

CSDs may charge additional costs and fees for opening and maintaining additional accounts that will be charged to the individual clients. These fees are subject to periodic and ongoing review by the relevant CSDs.

For detail of the specific fees charged by the relevant CSDs, refer to the relevant fee schedules published by the CSDs.

### CSD Participation

Citco Bank may hold directly securities for clients at the following CSDs:

| CSD                                      | Citco Participants | Link to CSD                                                                                           |
|------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------|
| Clearstream Banking S.A.<br>(Luxembourg) |                    | <a href="https://www.clearstream.com/clearstream-en/">https://www.clearstream.com/clearstream-en/</a> |
| Euroclear Bank SA/NV (Belgium)           |                    | <a href="https://www.euroclear.com/en.html">https://www.euroclear.com/en.html</a>                     |