



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

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# Consultation on Revisions to the Regulatory Framework for Money Transmission Businesses CP 64



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## 1. Purpose of Consultation

The Central Bank of Ireland (Central Bank) proposes to implement a revised regulatory framework for money transmission businesses to align the existing regime with the prudential requirements of the regime applying to payment institutions pursuant to the European Communities (Payment Services) Regulations 2009 (the Regulations).

The existing regulatory regime applying to money transmission businesses was put in place primarily for anti-money laundering purposes. Although money transmission services provided by money transmission businesses are very similar to the payment services provided by payment institutions pursuant to the Regulations, the regulatory regime applying to money transmission businesses is dissimilar in key areas such as safeguarding and capital requirements. The proposal to align the two regimes reflects the similar nature of the services within these regimes and will ensure that similar business models are governed by appropriately robust regulatory regimes.

## 2. Introduction to Money Transmission Businesses

In accordance with the requirements of the Central Bank Act 1997 (as amended) (the Act), a person (legal or natural) shall not operate as a money transmission business unless the person is the holder of an authorisation under Part V of the Act from the Central Bank. The Central Bank is the competent authority in Ireland for the purposes of Part V of the Act.

Part V of the Act defines a money transmission business as “a business that comprises or includes providing a money transmission service to members of the public”.

A “*money transmission service*” is defined as meaning-

“a service that involves *transmitting money* by any means, other than such a service provided-

a) by a person or body that is required to be licensed, registered or otherwise

authorised by the Bank under a designated enactment (other than under Part V of the Central Bank Act 1997 (as amended)) or designated statutory instrument, or

b) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body”.

“*Transmitting*” is defined as including transmitting-

- a) by means of a message or other form of communication, or
- b) by means of a transfer instrument, or
- c) by means of a clearing network.

“*Money*” is defined as including-

Any representation of money (such as a cheque) and any means by which monetary value is stored.

A person authorised by the Central Bank to operate as a money transmission business is required to comply with the Authorisation Requirements and Standards applied to such firms on an on-going basis.

### 3. Legislation Applicable to Money Transmission Businesses

Legislation relevant to the regulation of money transmission businesses is listed below. Where the links provided are to [www.irishstatutebook.ie](http://www.irishstatutebook.ie), users should note the disclaimer on the Irish Statute Book website. The following list is not exhaustive and is intended to serve as a general guide only.

#### Acts

- Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010
- Consumer Credit Act, 1995
- Central Bank Act, 1997 (as amended)
- Central Bank and Financial Services Authority of Ireland Act, 2004
- Central Bank Reform Act 2010

### **EU Directives**

- 1st Money Laundering Directive - 91/308/EEC
- 2nd Money Laundering Directive - 2001/97/EC
- 3rd Money Laundering Directive - 2005/60/EC

## **4. Authorisation Process for Money Transmission Businesses**

The Central Bank is the competent authority in Ireland for the authorisation of money transmission businesses.

Each potential applicant must consider whether its proposed business model:

- requires authorisation pursuant to Part V of the Act (including meeting the definition of “money transmission business”);
- complies with the Central Bank’s Authorisation Requirements and Standards; and
- is capable of complying with, and adhering to, the Authorisation Requirements and Standards that must be satisfied on an on-going basis.

## **5. Supervision Process for Money Transmission Businesses**

### **General**

The supervision process for money transmission businesses is designed to monitor the effectiveness of the measures adopted by such businesses to comply with the on-going requirements set out in the Authorisation Requirements and Standards applied to such firms.

### **Governance and Systems**

Money transmission businesses must have appropriate corporate governance arrangements in place. Systems and policies must also be in place to mitigate risk and monitor compliance with their internal policies.

### **Fitness & Probity**

A sound and effective fit and proper test is a critical component of the regulatory regime. To ensure the proper discharge of their responsibilities, it is important

that Directors and Managers have the skills to manage a money transmission business. Firms are responsible for ensuring that staff performing Pre-Approval Controlled Functions / Controlled Functions meet the Fitness and Probity Standards, both on appointment to such functions and on an on-going basis.

A money transmission business must complete an Individual Questionnaire, on receipt of log-on details to the Central Bank Online Reporting System (ONR), for each of the individuals identified as proposed holders of Pre-Approval Controlled functions. The requirements and descriptions of these functions can be found in:

- Central Bank Reform Act 2010;
- Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011;
- Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011.

### **Consumer Protection**

The Central Bank has a role in ensuring that the best interests of consumers of financial services are protected and our objective is to have a financial services industry where consumers' interests are protected. The Consumer Protection Code 2012 (the Code) applies to money transmission businesses. The key provisions of the Code relate to:

- Transparency – consumers should be provided with clear, relevant, and accurate information, including on cost, during the sales process;
- Suitability – consumers should be recommended a product/service appropriate to their needs and suitable for them;
- Services – Consumers should receive a high standard of follow-up services e.g., making a complaint, switching product, dealing with errors.

The Central Bank monitors compliance with consumer protection requirements through:

- inspections and reviews;
- themed inspections;
- mystery shopping exercises; and
- monitoring the advertising of financial services.

### **Approval of Charges**

The Central Bank is responsible for the approval of certain charges imposed by a money transmission business in accordance with Section 149A of the Consumer Credit Act, 1995 (as amended). A money transmission business must make a submission to the Central Bank if it wishes to introduce or increase charges in respect of a service.

The Central Bank reviews these submissions and either approves the charge in full, accepts the proposal but at lower levels requested by the entity or rejects the proposal. The Central Bank assesses each submission based on the following criteria which are set down in legislation:

- the promotion of fair competition;
- the impact new charges or increases in existing charges will have on customers;
- how the money transmission business justifies its proposed new charges or increase in existing charges; and
- a firm passing any costs on to its customers.

### **Money Laundering and Terrorist Financing**

The Central Bank is also responsible for monitoring the anti-money laundering and prevention of the financing of terrorism measures adopted by money transmission businesses.

## **6. Industry Funding Levy**

An annual industry funding levy is payable by money transmission businesses.

## **7. Proposals**

As outlined above, the Central Bank proposes to implement a revised regulatory framework for money transmission businesses to align the existing regime with the prudential requirements of the regime applying to payment institutions pursuant to the Regulations.

It is proposed that the revised Authorisation Requirements and Standards attached to this paper will apply to firms who require authorisation as money transmission businesses. We are now seeking comments and views on these proposed Authorisation Requirements and Standards from all interested parties. We would also encourage respondents who disagree with particular proposed provisions to put forward alternative approaches and the reasons why they feel those proposals would more appropriately address the issues.

## **8. Making Your Submission**

The closing date for submissions is 12 July 2013. Any comments received after this date will not be considered. We welcome comments and views from all interested parties.

Please make your submissions by email and, if possible, in writing (see details below). When addressing any issue raised in this paper, please use the headings and the provision numbering in this paper to identify the section you are referring to. If you are raising an issue that is not referred to in this paper, please indicate this in your submission.

The Central Bank intends to make submissions available on our website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.



Despite the approach outlined above, the Central Bank makes no guarantee not to publish any information that you deem confidential. Therefore, please be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to it being published in full.

Please clearly mark your submission 'Response to Consultation on Revisions to the Regulatory Framework for Money Transmission Businesses' and send it to:

Consumer Protection – Banking & Policy Division  
Central Bank of Ireland  
PO Box 9138  
6-8 College Green  
Dublin 2

E-mail: [mtconsult@centralbank.ie](mailto:mtconsult@centralbank.ie)

**Appendix 1****Authorisation Requirements and Standards for  
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## INTRODUCTION

The obligation to hold an authorisation applies to all persons who provide a **money transmission service** as defined in the **Central Bank Act 1997** (as amended) (**'the Act'**).

In accordance with Part V of **the Act**, a person (legal or natural) shall not provide a **money transmission service** unless the person is a holder of the required authorisation from the **Central Bank**. Section 29 of **the Act** provides that it is a criminal offence to carry on a **money transmission business** unless the person is the holder of an authorisation. Section 36K provides that if a body corporate commits an offence under Part V of **the Act**, each person who was an officer of the body at the time the offence is found to have been committed, commits an offence.

All money transmission services provided by a **money transmission business** must be conducted within the State. If a **money transmission business** wishes to provide money transmission services in another jurisdiction it must seek the appropriate authorisation from the relevant competent authority in that jurisdiction.

Part A of this document sets out:

- the authorisation requirements that must be complied with by an applicant seeking authorisation as a **money transmission business**; and
- the on-going conditions that are imposed by the **Central Bank** when granting an authorisation to carry on a **money transmission business**.

Please note that each **money transmission business** should refer to the conditions of authorisation, which are annexed to its authorisation, for complete details of the conditions imposed on its authorisation.

Part B of this document lists certain other regulatory requirements which apply to **money transmission businesses** and which **money transmission businesses**

should be aware of in relation to the provision of **money transmission services**. This list is not exhaustive and it is the responsibility of each individual regulated entity to obtain independent legal advice and to ensure compliance with all aspects of applicable legislation and other regulatory requirements.

## Part A: Authorisation Requirements and On-going Conditions

### 1. LEGISLATIVE BASIS FOR THE AUTHORISATION REQUIREMENTS AND CONDITIONS IMPOSED BY THE CENTRAL BANK AND CONSEQUENCES OF NON-COMPLIANCE:

- 1.1 Pursuant to Section 30 of **the Act**, in order to apply for authorisation to carry on a **money transmission business**, the **Central Bank** requires each applicant to comply with the requirements herein and to provide the documentation specified. Please note that section 30 (3) of **the Act** provides that 'The Bank may, by written notice given to an applicant, require the applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not less than 14 days, the Central Bank may refuse the application'.
- 1.2 If the **Central Bank** grants an application for authorisation, it will impose the requirements contained in Part A of this document as conditions pursuant to Section 33 of **the Act**. The applicable conditions will be specified in one or more documents annexed to the authorisation granted, in accordance with Section 33(2) of **the Act**.
- 1.3 A contravention of any provision of **the Act** or of any condition of authorisation is a prescribed contravention for the purposes of Part IIIC of the **Central Bank Act 1942** (as amended) and accordingly the authorised **money transmission business** may be subject to the Administrative Sanctions Procedure of the **Central Bank** in the event of committing such a contravention.
- 1.4 Section 35 of **the Act** provides that it is a criminal offence for the holder of an authorisation to fail to comply with the requirements imposed on the holders of an authorisation pursuant to Part V of **the Act**, the conditions of the authorisation and/or the requirements (if any) imposed by regulations in force under Part V of **the Act**. Section 36K provides that if a body corporate commits



an offence under Part V of **the Act**, each person who was an officer of the body at the time the offence is found to have been committed commits an offence.

**1.5** Pursuant to section 36A(1)(d) of **the Act**, the **Central Bank** may revoke an authorisation if it satisfied on reasonable grounds that the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of Part V of **the Act**, a condition of the authorisation or a requirement imposed by or under Part V of **the Act**. See section 36A of **the Act** for a comprehensive list of the grounds upon which the **Central Bank** may revoke an authorisation.

**1.6** Pursuant to Section 34 of **the Act**, the **Central Bank** may, from time to time, amend an authorisation granted to a person to conduct **money transmission services** –

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or
- (c) by adding a new condition,

but only after giving to the holder of that authorisation a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to the **Central Bank** in relation to the proposed amendment.

## 2. CAPITAL AND OWN FUNDS

### 2.1 Initial Capital

2.1.1 A **money transmission business** shall have a minimum initial capital of €50,000.

2.1.2 For the purposes of calculating an applicant's initial capital, only the items described in subparagraphs (a) and (b) of Regulation 3(1) of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 shall be taken into account.

### 2.2 Own Funds

2.2.1 A money transmission business is required to hold own funds on an on-going basis calculated in accordance with 2.2.2, 2.2.3 and 2.2.4 below.

2.2.2 The amount of the **money transmission business**' own funds to be held on an on-going basis must at all times equal i) the initial capital requirement set out in section 2.1.1, or ii) the amount calculated in accordance with 2.2.4 which is based on the level of transactions during the previous financial year, whichever is higher.

2.2.3 The own funds to be held by a **money transmission business** can be made up of the items prescribed in Regulations 3 and 9 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) subject to Regulations 7 and 8 and the limits set out in Regulation 11, of those Regulations.

2.2.4 The calculation of own funds referred to in 2.2.2 is as follows::

- (i) for TV up to €5 million, 3.2% of TV,
- (ii) for TV between €5 million and €10 million, €160,000 plus 2.0% of (TV - €5 million),
- (iii) for TV between €10 million and €100 million, €260,000 plus 0.8% of (TV - €10 million),

- (iv) for TV between €100 million and €250 million, €980,000 plus 0.4% of (TV - €100 million), and
- (v) for TV between €250 million, €1,580,000 plus 0.2% of (TV - €250 million).

TV= Transaction volume (where TV is one-twelfth of the total amount of transactions executed by the **money transmission business** in the previous financial year)

**Note:** For the purposes of the calculation in any of subparagraphs (i) to (iv) in Section 2.2.4 above, TV includes its upper limit but not its lower limit e.g. in (ii) above TV includes €5,000,000.01 to €10,000,000.00.

- 2.2.5 The **Central Bank** may require a **money transmission business** to hold own funds of up to 20% higher than that calculated in accordance with 2.2.2 above or, may allow the **money transmission business** to hold own funds of up to 20% less than that calculated in accordance with 2.2.2, following an evaluation by the **Central Bank** of the risk management processes, risk loss data base and internal control mechanisms of the **money transmission business**.

### 3. SAFEGUARDING OF USERS' FUNDS

#### 3.1 General Requirements for the Safeguarding of Users' funds

These General Requirements are applicable to all **money transmission businesses** irrespective of the method chosen to safeguard **users' funds** as set out in 3.2 below.

- 3.1.1 A **money transmission business** must satisfy the **Central Bank** that it has adequate arrangements in place to safeguard **users' funds** including arrangements to prevent the use of **users' funds** for the own account of a **money transmission business**.
- 3.1.2 Where a **money transmission business** receives **users' funds** together with funds in respect of non-money transmission services it is only required to

safeguard those **users' funds** received in respect of the provision of **money transmission services** pursuant to Part V of the **Act**. **Money transmission businesses** should be aware that they may however be obliged to safeguard those funds received in respect of the provision of non-money transmission services pursuant to provisions in other legislation.

- 3.1.3 A **money transmission business** must exercise due skill, care and diligence in the selection of and engagement with any and each **credit institution**; custodian; or insurer used by the **money transmission business** to safeguard **users' funds**, taking into account the stability, expertise and market reputation of the entity and any legal or regulatory requirements or market practices that could adversely affect **money transmission service users'** rights. The **money transmission business** is required to carry out and document a periodic review of the appropriateness of the engagement with such **credit institution**, custodian or insurer.
- 3.1.4 A **money transmission business** shall ensure that the **credit institution**, custodian or insurance company being used for the purposes of safeguarding **users' funds** does not belong to the same group as the **money transmission business** itself.
- 3.1.5 A **money transmission business** shall:
- a) keep such records and accounts as are necessary to enable it at any time and without delay to distinguish funds held for each and every user from the funds held for every other user of the **money transmission business**; and
  - b) maintain its records and accounts in such a way that ensures their accuracy and in particular that they correspond to the funds held for **money transmission service users**.
- 3.1.6 Where a **money transmission business** accepts **users' funds** by means of cheque or other payable order, such funds shall be considered **users' funds** once the funds have been received by the **money transmission business**.

- 3.1.7 The **money transmission business** shall ensure that **users' funds** are at all times identified as such to all parties who come into the possession of such funds, until such time as they cease to be **users' funds** in accordance with paragraph 3.1.7.
- 3.1.8 Funds shall cease to be considered as **users' funds** when the funds have been paid to the intended recipient in accordance with the user's instructions.
- 3.1.9 A **money transmission business** must inform the **Central Bank** in advance of any changes in the system employed for the safeguarding of **users' funds**.
- 3.1.10 To ensure the accuracy of its records, a **money transmission business** must, at least on a daily basis, carry out a reconciliation of all records of **money transmission service users** with the records of the accounts where such amounts are safeguarded.
- 3.1.11 In order to complete the reconciliation, a **money transmission business** must reconcile the balance on each **money transmission business users'** account as recorded by the **money transmission business** with the balance on that account as set out in the statement or similar document issued by the **credit institution**, insurance company or custodian.
- 3.1.12 A **money transmission business** must keep an accurate record of each reconciliation carried out.
- 3.1.13 Where reconciliations are carried out electronically a **money transmission business** must retain a hard copy of the reconciliation record, which must be reviewed, signed and dated by at least two people.
- 3.1.14 A **money transmission business** must include in its records an explanation of all differences between the records of **money transmission service users** and the actual account balances identified by the **money transmission business**.



3.1.15 Where differences other than timing differences are identified they must be corrected as soon as possible. The **money transmission business** is required to notify the **Central Bank** in writing within one business day of the completion of the reconciliation of any differences and must inform the **Central Bank** where recurring differences arise.

3.1.16 A **money transmission business** is required to notify the **Central Bank** immediately where it has been unable or has failed to perform the reconciliation within the timeframe set out in paragraph 3.1.9 above.

## 3.2 Methods of Safeguarding

3.2.1 A **money transmission business** is required to safeguard **users' funds** either by:

a) Depositing these funds in a **designated user account** in a **credit institution** or investing the funds in secure, liquid, low risk assets<sup>1</sup>. The **money transmission business** must ensure that **users' funds** shall not at any time be comingled with the funds of any natural or legal person other than **money transmission service users** on whose behalf the funds are held and must also ensure such funds are protected against the claims of other creditors of the **money transmission business** in the event of an insolvency;

Or

b) Ensuring **users' funds** are covered by an insurance policy or comparable guarantee from an insurance company or a **credit institution** for an amount equal to or greater than that which would have been segregated in the absence of the insurance policy or comparable guarantee and which is payable to the **money transmission user** in the event that the **money transmission business** is unable to meet its financial obligations.

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<sup>1</sup> Secure liquid low risks assets are only those assets approved by the Central Bank.

### 3.3 Segregation of Users' Funds

The following requirements at 3.3.1 to 3.3.4 apply where a **money transmission business** has elected to safeguard **users' funds** in accordance with 3.2.1(a) above.

- 3.3.1 By the end of the business day following the day of receipt of **users' funds**, a **money transmission business** must deposit these funds in a **designated user account** in a **credit institution** or invest the funds in secure, liquid, low risk assets which are those assets approved in accordance with paragraph 3.2.1 (a).
- 3.3.2 Where a **money transmission business** opts to invest **users' funds** other than through a deposit in a **credit institution**, it shall apply to the **Central Bank** for approval to do so, setting out full details of the proposed assets and why it considers them to be secure, liquid and low-risk. A **money transmission business** may not invest the **users' funds** other than through depositing such funds in a **designated user account** in a **credit institution**, until such time as the **Central Bank** has approved the investment. It is the responsibility of the **money transmission business** to monitor, on an on-going basis, the characteristics of the assets and to take appropriate action to prevent loss in the event that the assets change to such an extent that they could no longer be considered to be secure, liquid and low-risk.
- 3.3.3 **Users' funds** received by the **money transmission business** must be lodged in the currency of receipt unless the **money transmission business** does not have a **designated user account** in that currency and it would be unduly burdensome for it to open such an account. In such circumstances the **money transmission business** is required to convert the funds to the currency of one of its **designated user accounts** and hold them in the **designated user account** on that basis. The **money transmission business**

is required to inform the **money transmission service user** of all fees and charges that will be payable by them on foot of the transaction.

3.3.4 A **money transmission business** that safeguards **users' funds** through the segregation of such funds shall:

- a) ensure that the designation on a **money transmission business users'** account held with a **credit institution** or a custodian identifies the fact that the funds held in these accounts are **users' funds**;
- b) maintain, and on request from the **Central Bank**, present documented evidence from a **credit institution** or custodian acknowledging that the **money transmission business' designated user account** is a client account and will therefore only be used for the benefit of customers, and will not be used for the benefit of the **money transmission business**.

### 3.4 Insurance Policy or Comparable Guarantee

The following requirements apply where a **money transmission business** has elected to safeguard **users' funds** in accordance with 3.2.1 b) above.

3.4.1 Where a **money transmission business** uses an insurance contract or comparable guarantee to safeguard **users' funds** it must ensure that the contract entered into with the insurance company provides that:

- a) All **users' funds** are covered by the insurance policy or other comparable guarantee from an insurance company or a **credit institution**; and
- b) The amount covered by the insurance policy or comparable guarantee is equal to or greater than the amount of **users' funds** held by the **money transmission business**; and
- c) The proceeds of the insurance policy or guarantee are payable to the **money transmission business** for the benefit of its customers in the

event that the **money transmission business** is unable to meet its financial obligations.

3.4.2 A **money transmission business** must ensure that, where the proceeds of the insurance policy or comparable guarantee are due and payable to the **money transmission business** for the benefit of its customers, they are paid into a separate users' account clearly identified for this purpose. When the funds are received by the **money transmission business**, the funds must be subject to the same protections as apply to **user's funds** under Chapter 3.

#### 4. ORGANISATION AND MANAGEMENT

4.1 A **money transmission business** 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 **money transmission business** is managed in accordance with all relevant legislation and regulatory requirements and in accordance with industry best practice.

4.2 A **money transmission business** shall have robust governance arrangements including:

- (a) a clear organisational structure with well defined, transparent and consistent lines of responsibility;
- (b) effective processes to identify, manage, monitor and report the risks it is or might be exposed to;
- (c) adequate internal control mechanisms to mitigate risk;
- (d) adequate systems in place to monitor compliance with its internal policies and legislative and other regulatory requirements; and
- (e) sound administrative and accounting procedures.

4.3 A **money transmission business** is required to have appropriate management skills, including, in accordance with the requirements pursuant to Part 3 of the Central Bank Reform Act 2010.

- 4.4** A **money transmission business** must 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 **money transmission business**.
- 4.5** A **money transmission business** must maintain sufficient compliance arrangements to ensure that it complies with all of the obligations to which it is subject. To that end, it must ensure:
- a) That it has a compliance function with the necessary authority, resources, expertise and access to all relevant information;
  - b) That a Compliance Officer is appointed who is responsible for the compliance function and for all compliance reporting;
  - c) That the responsibilities of compliance officers are clearly defined and documented;
  - d) That the relevant persons involved in the compliance function are not involved in the performance of the services or activities they monitor; and
  - e) That the proposed reporting lines/functional relationships between the Compliance Officer and the employees of the applicant/ the applicant's board of directors (including the frequency and format of reporting thereof) are clearly defined.
- 4.6** A **money transmission business** shall have an internal audit function; (a) to provide for independent internal oversight and (b) to evaluate and improve the effectiveness of the **money transmission business'** risk management, internal controls and governance processes.
- 4.7** Without prejudice to the generality of the foregoing requirements of Chapter 4, a **money transmission business** is required to:
- a) 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;

- b) Have sufficient resources to effectively conduct its business within the requirements of the supervisory regime;
- c) Be aware of and monitor, on an on-going basis, all risks to its business and maintain and document adequate technical, organisational and procedural safeguards;
- d) Establish, implement and maintain and document systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information;
- e) Have effective and documented business continuity and disaster recovery procedures in place;
- f) Have constituting documentation which is sufficiently wide to permit the **money transmission business** to conduct the proposed **money transmission services**.

**4.8** The **Central Bank** reserves the right to request an independent security system audit by an appropriate third party and the **money transmission business** shall provide a copy of a report prepared by the third party within the time limits provided for in the **Central Bank's** request.

## **5. RELATIONSHIP WITH THE CENTRAL BANK**

### **5.1 General**

5.1.1 A **money transmission business** is required to consult with the **Central Bank** prior to engaging in any new activities or making any amendments to existing activities.

5.1.2 A **money transmission business** is required to be open and cooperative in its dealings with the **Central Bank**. This requirement includes but is not limited to the requirement to notify the **Central Bank** as soon as it becomes aware of:

- (a) any breaches of the conditions of its authorisation or of any requirements of legislation applicable to the firm that may have occurred;
- (b) the commencement of any legal proceedings by or against the **money transmission business**;
- (c) any situations which have impacted or have the potential to impact significantly on the operation of the **money transmission business** or the safeguarding of **users' funds**.

5.1.3 The **money transmission business** must obtain the prior approval of the **Central Bank** in respect of any proposed change of name.

5.1.4 In accordance with Section 36 of **the Act**, if a **money transmission business** decides to cease providing money transmission services it must request the revocation of its authorisation in writing from the **Central Bank**. The request for revocation of authorisation must clearly set out the rationale for seeking that revocation, and must include a plan for the orderly wind-down of the **money transmission business**.

## 5.2 Audited Accounts and Annual Returns

5.2.1 A **money transmission business** must submit its annual audited accounts and a copy of its auditor's report to the **Central Bank** within six months of the end of the relevant financial year.

5.2.2 At the same time as it submits the annual audited accounts, a **money transmission business** must submit full details of its ownership structure, including full particulars of all **qualifying shareholders** and their holdings as at the date of submission. A **money transmission business** must also submit an annual return with details of its key information including **capital adequacy, safeguarding arrangements** and **transaction volumes** which will be set out in conditions of money transmission business conditions of authorisation.

5.2.3 A **money transmission business** is required to appoint an independent external auditor on an annual basis, or more frequently as required by the **Central Bank**, to examine the books and records of the firm in relation to **users' funds**. The **money transmission business** is required to furnish a copy of the external auditors report to the **Central Bank** within 6 months of financial year end.

5.2.4 Where a **money transmission business** is part of a group, it must also submit the annual audited accounts of its direct parent and its ultimate parent, together with the annual audited accounts of any other company within the group specified by **Central Bank**.

## 6. OWNERSHIP

6.1 The **money transmission business** must seek the prior approval of the **Central Bank** in respect of any proposed material change of ownership of the **money transmission business** i.e. proposed changes in direct and indirect **qualifying shareholders**.

The **Central Bank** considers that a material change in ownership occurs where the change would result in the proportion of voting rights or share capital held by a person or more than one person acting in concert reaching or exceeding 10%, 20%, 33% or 50% or would result in a **money transmission business** becoming a subsidiary of the acquirer.

6.2 In the case of a body corporate, the prior approval of the **Central Bank** must be sought for any transfer of shares, which would result in the transferee controlling more than 10 per cent of the shares, voting rights attaching to shares or other interests in the **money transmission business**.

- 6.3** Where a shareholding which is registered in the name of a nominee constitutes more than 10 per cent of shares or of the voting rights attaching to shares in a **money transmission business**, the ultimate beneficial ownership of shares so held must be identified to the **Central Bank**.
- 6.4** A **money transmission business** shall notify the **Central Bank** where there is a direct or indirect disposal of shares by a person or more than one person acting in concert which would result in the proportion of voting rights or capital held by the person or persons falling below 10, 20%, 33% or 50% or such that a **money transmission business** would cease to be a subsidiary of the disposer.

## **7. OUTSOURCING**

- 7.1** A **money transmission business** shall notify the **Central Bank** in advance where it proposes to outsource any **important operational function**.
- 7.2** Where a **money transmission business** proposes to outsource an **important operational function** it must ensure that:
- a) the outsourcing shall not result in the delegation of responsibility by senior management;
  - b) the relationship and obligations of the **money transmission business** towards its customers, under Part V of **the Act** and the conditions of its authorisation, shall not be altered;
  - c) none of the other conditions imposed by the **Central Bank** on the **money transmission business** are removed or modified; and
  - d) the outsourcing of operational functions will not be undertaken in such a way as to impair the quality of the **money transmission business**' internal controls and the ability of the **Central Bank** to monitor the **money transmission business**' compliance with all of its obligations.

7.3 Without prejudice to the generality of the foregoing, a **money transmission business** shall take the necessary steps to ensure that the following conditions are satisfied:

- a) The **money transmission business** must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
- b) Appropriate action must be taken by the **money transmission business** if it appears that the provider of the outsourced services may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
- c) The **money transmission business** must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;
- d) The provider of the outsourced services must disclose to the **money transmission business** any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
- e) The **money transmission business** must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to customers;
- f) The provider of the outsourced services must, when required, cooperate with the **Central Bank** in connection with the outsourced activities;
- g) The **money transmission business**, its auditors and the **Central Bank** must have effective access to data related to the outsourced activities, as well as to the business premises of the provider of the outsourced services; and the **Central Bank** must be able to exercise those rights of access;
- h) A **money transmission business** shall make available on request to the **Central Bank** all information, including but not limited to books, records and documentation, necessary to enable the **Central Bank** to supervise



the compliance of the performance of the outsourced activities with the **money transmission business**' legal and regulatory obligations;

- i) The provider of the outsourced services must protect any confidential information relating to the **money transmission business** or its customers;
- j) The **money transmission business** and the provider of the outsourced services must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
- k) The respective rights and obligations of the **money transmission business** and of the provider of the outsourced services shall be clearly allocated and set out in a written agreement.

**7.4** Where a provider of the outsourced services, acting on behalf of a **money transmission business**, engages directly with a **money transmission service user**, the **money transmission business** must inform the **money transmission service user** that the particular function has been outsourced to the provider of the outsourced services.

**7.5** A **money transmission business** must notify the **Central Bank** as soon as possible where a change occurs or is due to occur to an outsourcing arrangement governing an **important operational function** relating to the provision of **money transmission services**.

## **8. OTHER PLACES OF BUSINESS**

**8.1** A **money transmission business** must receive the prior approval of the **Central Bank** before operating from another place of business other than its head office. Such other place of business may be located within the State only.

**8.2** A **money transmission business** intending to operate from another place of business must advise the **Central Bank** of the nature of the services the other place of business will provide and the name(s) of those responsible for the management of the other place of business.

**8.3** A **money transmission business** must notify the **Central Bank**, at least 14 days in advance, of the proposed closure of any place of business and the reason for such closure.

## **9. RECORD KEEPING**

**9.1** Pursuant to Section 36F of **the Act**, the **Central Bank** requires a **money transmission business** to keep appropriate records regarding its regulated business. Such records include but are not limited to:

- (a) Identification of **money transmission service users**;
- (b) Communications with **money transmission service users**;
- (c) Transaction records;
- (d) Reconciliations of **users' funds**;
- (e) Board Minutes;
- (f) Financial Audit Reports;
- (g) Internal Audit Reports;
- (h) Compliance Reports; and
- (i) Complaints handling records.

Appropriate records must be kept for at least five years from:

- (i) In the case of (a) to (d), the date on which the **money transmission business** ceases to provide a **money transmission service** to the **money transmission service user** or the date of the last transaction with the customer, whichever is the later.
- (ii) In the case of (e), the date of the Board meeting.
- (iii) In the case of (f) to (h), the date of the relevant report.
- (iv) In the case of (i), the date of the closing of the complaint.

All records of the **money transmission business** must be kept in the State and pursuant to section 36f(1)(b) of **the Act** the **money transmission business** is required to notify the **Central Bank** in writing of the address of the office or offices where those records are kept.

The requirements imposed above are in addition to any other requirement imposed by law with respect to the keeping of records by the holder of an authorisation.

## 10. DEFINITIONS

**Central Bank or Bank** means the **Central Bank** of Ireland.

**Credit institution** means (a) a bank licensed under section 9 of the Central Bank Act 1971, (b) a building society incorporated under the Building Societies Act 1989, or deemed by section 124(2) of that Act to be so incorporated, that is authorised to accept deposits under section 27 of that Act, or (c) the holder of an authorisation issued by a competent authority of another Member State for the purposes of EU Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

**Designated user account** is an account held with a **credit institution** which is used for the sole purpose of holding and protecting **users' funds**.

**Important operational function:** an operational function is important if a defect or failure in its performance would materially impair—

- a) the continuing compliance of the **money transmission business** concerned with the requirements of its authorisation or its other obligations under applicable legislation;
- b) its financial performance; or
- c) the soundness or continuity of its **money transmission services**.

**Money transmission business** means a business that comprises or includes providing a **money transmission service** to members of the public.

**Money transmission service** is as defined in Section 28 of **the Act**.

**Money transmission service user** is a member of the public receiving a **money transmission service** from a **money transmission business**.

**Qualifying shareholder** in relation to another person, means a person with a direct or indirect holding in the other person—

(a) that represents 10% or more of the share capital of, or the voting rights in, the other person, or

(b) that makes it possible to exercise a significant influence over the management of the other person.

**The Act** means the **Central Bank Act 1997**, as amended

**Users' funds** consist of funds which, in the course of carrying on a **money transmission service**, a **money transmission business**, receives, holds, or pays out for or on behalf of **money transmission service users**.

## Part B: Additional Regulatory Requirements

This Part lists other regulatory requirements of which the **money transmission business** should be aware of in relation to the provision of **money transmission services**.

This list is not exhaustive and it is the responsibility of each individual regulated entity to obtain independent legal advice and to ensure compliance with all aspects of applicable legislation and other regulatory requirements.

A breach of these requirements may amount to prescribed contraventions for the purposes of Part III C of the Central Bank Act 1942 (as amended) and/or to criminal offences under the relevant legislation and accordingly may lead to the imposition of sanctions provided for in Part III C of the Central Bank Act 1942 and/or under the relevant legislation. Furthermore, a contravention of these requirements may be grounds for the revocation of the **money transmission business'** authorisation pursuant to Section 36A of **the Act**.

### 10.1 **Anti-Money Laundering / Counter Terrorist Financing Requirements per the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**

Money transmission businesses should note that the provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 apply to authorised **money transmission businesses**.

### 10.2 **Consumer Protection Code 2012**

Money transmission businesses should note that the provisions of the Consumer Protection Code 2012 apply.

### 10.3 **Consumer Credit Act 1995**

**Money transmission businesses** must comply with Section 149A of the Consumer Credit Act, 1995, which prohibits imposing or increasing a charge

for a service provided to a customer or a group of customers without the prior approval of the **Central Bank**.

#### **10.4 Central Bank Act 1942**

An annual levy may be payable by a **money transmission business** calculated in accordance with Regulations made pursuant to Section 32D of the Central Bank Act 1942.

#### **10.5 Fitness & Probity**

**Money transmission businesses** and persons exercising pre-approval controlled functions and controlled functions in **money transmission businesses** should note the provisions of Part 3 of the Central Bank Reform Act 2010 and the regulations and standards issued under this Part. Before a **money transmission business** can appoint a person to a pre-approval controlled function, the **Central Bank** must have approved the appointment in writing. **Money transmission businesses** are also responsible for ensuring that staff performing pre-approval controlled functions and controlled functions meet the Fitness and Probity Standards both on appointment to such functions and on an on-going basis.

#### **10.6 Obligations of the auditor of a regulated financial service provider to provide a report to the Central Bank in certain circumstances**

**Money transmission businesses** should note that Part IV of the **Act** imposes obligations on the auditor of a **money transmission business**.

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