

Shop Direct Ireland Ltd

Response to consultation paper (CP51) on the Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010

Shop Direct Ireland Ltd (SDI) is a licensed moneylender. SDI is also a major catalogue and online retailer, providing credit to finance the purchase of goods. SDI welcomes the opportunity to comment on the proposed new regime of fitness and probity standards.

Key Concerns

1, Proportionality - SDI's principal comment relates to the question of proportionality. It is proposed that the new regime will apply to all financial institutions regulated by the Central Bank. This will of course include licensed moneylenders.

Typically firms whose only or principal business is that of a moneylender for the purposes of the Consumer Credit Act operate simple business models with relatively few staff, including at senior management level. Many of the controlled functions or pre approval controlled functions proposed in the consultation are combined in the roles of a small number of staff. Additionally, a number of the functions are not necessarily appropriate for businesses of the size and limited complexity of moneylenders.

Clearly, the standards of probity required in any financial services business are the same. However, it is essential that the requirements on fitness and the identification of persons carrying out controlled functions are applied on a basis which is proportionate to the activities of the firm, and the risk of consumer detriment that the firm represents. A moneylender presents a very different risk profile to a bank or investment firm, and the failure of a moneylender is highly unlikely to create market instability or other threats to the financial system.

SDI believes that non statutory guidance applying a genuinely proportionate, risk based approach to the standards expected and the relevance of controlled functions to the governance requirements appropriate to different types of business would be helpful

2. Call Centre Staff - SDI believes it is essential that the position of call centre staff is clarified, either formally or in guidance. As a retailer, SDI operates call centres through which customers order goods, usually on credit. Call centres typically contain large numbers of junior staff, with relatively high turnover rates. If all individual call centre agents who may receive a query about credit terms are required to be treated as carrying out a controlled function, it will be wholly impractical for SDI to continue to operate its existing business model. It also seems unworkable in the context of outsourced call centre operations, in which call centre staff will be acting on behalf of different clients.

Responsibility for management of call centres should rest with specified individuals, and it may be appropriate for this management function to be regarded as a controlled function. But if individual call centre agents are required to be treated as carrying out controlled functions SDI's business model will no longer be viable.

3. Overseas Group Companies and Outsourcing – SDI believes that the position of staff carrying out functions based outside Ireland, or employed by overseas group companies, must be clarified. It should be clear that provided the function is ultimately controlled by management in Ireland, it is the management in Ireland that is carrying out the controlled function. The provision of shared group services by staff operating outside Ireland becomes a concern if those activities may entail the carrying out of controlled or pre approval controlled functions. Without the efficiencies of shared group functions some businesses may no longer be viable. Provided the function is managed by staff based in Ireland, it should be clear that activities carried out operationally on a day to day basis outside Ireland will not be regarded as a controlled function. Similarly, if activities are outsourced to third parties, the controlled function should be the management of the outsourced resource by the firm.

Other Comments

4. It is critical that the process for approval of pre approval applications is efficient and prompt. The suggestion in paragraph 38 that an online process be introduced is welcome, but the new regulations should not be implemented until this online process has been implemented and successfully tested.

5. As noted above, any process which requires large numbers of relatively junior staff to be treated as carrying on controlled functions will be unworkable in practice, for logistical and volume reasons as well as cost and resource. Controlled functions should be limited to more senior roles with genuine management responsibility, for which the processes of maintaining and evidencing effective systems and controls is not unduly onerous or bureaucratic. Additionally, the vetting and due diligence processes must be tailored to be appropriate to the risk profile of the business and the role. Provided any guidance recognises this need, and leaves room for discretion as to how firms achieve an overall level of confidence, it would be helpful.

6. It must be clarified that firms seeking to carry out required due diligence will not risk finding themselves in breach of data protection, employment or discrimination legislation. The extent to which firms can rely on information from potential candidates themselves, or are required to carry out detailed background checks, bearing in mind the limited sources of information available to employers, is a concern.

7. The timeframe for implementation is a concern, particularly if guidance which will influence the processes which must be implemented is to be published. There must be a realistic period after publication of the guidance before the provisions are fully implemented.

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