



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2016

Policy Statement on the Authorisation of Branches of Non-EEA Credit Institutions under Section 9A of the Central Bank Act 1971



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1 Introduction

1.1. This Policy Statement elaborates the Central Bank of Ireland's (the Central Bank's) perspectives in relation to the authorisation of relevant credit institutions (hereinafter 'RCIs') headquartered in a non-European Economic Area (EEA) country or territory (hereinafter 'country of origin' or 'COO') to operate a branch (hereinafter 'branch' or 'third country branch') in Ireland (the State).

1.2. This Policy Statement is applicable to any RCI intending to directly establish a branch in Ireland pursuant to section 9A of the Central Bank Act 1971 (the 1971 Act). To the extent that this Policy Statement also elaborates the Central Bank's general expectations and possible requirements post-authorisation, this Policy Statement may also be applied to any RCI that has already been authorised by the Central Bank to operate such a branch in Ireland.

1.3. This Policy Statement has been substantially shaped by the fact that responsibility for prudential, as well as recovery and resolution, oversight of an RCI and its branches does not rest with the Central Bank. These are the responsibilities of the relevant COO authority or authorities (hereinafter collectively referred to as 'RCOOA').¹

1.4. A branch is not a separate legal entity for regulatory purposes and the Central Bank has very limited local statutory prudential and resolution powers with respect to branches of RCIs.

¹ This should be taken to mean whatever authority is responsible for prudential banking supervisory matters in the COO and, if different, also whatever authorities are responsible for, *inter alia*, DGS, resolution, and conduct of business requirements in the COO.

1.5. As further elaborated in this Policy Statement, the Central Bank's risk tolerance in relation to the authorisation of a prospective branch of an RCI will thus be heavily influenced by:

a) Whether relevant regulatory and supervisory requirements and arrangements in the COO correspond, such that they deliver equivalent outcomes, to requirements and arrangements in the State;

b) Verification of the business model and prudential soundness of the RCI, as well as acceptance by the RCOOA of its/their responsibilities.

The Central Bank will generally prefer to have a Memorandum of Understanding (MoU) in place with the RCOOA prior to receiving an application from the RCI. The Central Bank will, in any event, expect a MoU to be concluded with the RCOOA before a formal decision may be taken to grant an authorisation. The Central Bank generally expects to conclude umbrella MoUs with RCOOAs encompassing all relevant areas, including prudential supervision, resolution and deposit guarantee scheme (DGS) matters;

(c) Extent to which the branch will engage in High Impact Activities (HIAs); and

(d) Arrangements for recovery and resolvability of the RCI, including the branch.

1.6. This Policy Statement does not pertain to Irish branches of EEA-established subsidiaries of credit institutions headquartered outside the EEA. These entities are subject to, *inter alia*, relevant requirements in the European Union (Capital Requirements) Regulations 2014 (S.I. 158 of 2014) and the European Union (Capital Requirements) (No 2) Regulations 2014 (S.I. 159 of 2014), transposing Directive 2013/36/EU (CRD IV) in Ireland, as well as Regulation (EU) No 575/2013 (CRR).

1.7. This Policy Statement should be read in conjunction with any other relevant guidelines, checklists or technical standards which may be issued or applied by the Central Bank from time-to-time.

1.8. In devising this Policy Statement, the Central Bank has been informed by approaches adopted by other EEA competent authorities in this area.

1.9. This Policy Statement is guided by the Central Bank's overarching statutory objectives of Safeguarding Stability and Protecting Consumers.²

1.10. Elements of this Policy Statement may be subject to change over time to reflect any relevant new initiatives or requirements in this area, including at EU level.³

Legislative Background

1.11. Section 9A(2) of the 1971 Act⁴ stipulates that the Central Bank may authorise an RCI to operate a branch in Ireland for the purposes of carrying out 'banking business'. Banking business is defined under section 2(1) of the 1971 Act as any business that consists of or includes-

(a) receiving money on the person's own account from members of the public either on deposit or as repayable funds; and

(b) the granting of credits on own account.

1.12. Section 9A(3) of the 1971 Act precludes the Central Bank from granting such an authorisation unless the Central Bank is at least satisfied that the RCI is subject, in the COO, to

regulatory or administrative provisions relating to authorisation to carry on banking business, as well as supervisory arrangements, corresponding⁵ to those in the State.

1.13. Regulation 25 of the European Union (Deposit Guarantee Scheme) Regulations 2015 (S.I. 516 of 2015) also requires the Central Bank to check whether deposits at branches of RCIs have DGS protection equivalent to that prescribed in S.I. 516 of 2015.

1.14. Section 54 of the Central Bank Reform Act 2010⁶ is also relevant to the Central Bank's scope for interaction with overseas regulators generally (see Annex 1 of this Policy Statement for full provisions of section 54).

1.15. Article 47(1) of CRD IV precludes third country branches from being subject to more favourable treatment than that afforded to EEA branches of credit institutions established in the EEA.

1.16. Recital 23 of CRD IV further states, *inter alia*, that third country branches should not enjoy the freedom to provide services or the freedom of establishment in Member States other than those in which they are established. Accordingly, RCIs authorised by the Central Bank to operate a branch under section 9A of the 1971 Act will not be permitted to utilise their authorisation as a mechanism for passporting within the broader EEA.

1.17. Where an RCI has been authorised by the Central Bank to operate a branch under section 9A of the 1971 Act, the branch will be considered by the Central Bank to be a

² Section 6A(2) of the Central Bank Act 1942.

³ Statutory references in this Policy Statement should be applied in accordance with section 14(2) of the Interpretation Act 2005.

⁴ Inserted by section 73 of the Central Bank (Supervision and Enforcement) Act 2013.

⁵ For the purposes of operationalising this requirement the Central Bank will expect that such provisions and arrangements in the COO should correspond to a level which delivers equivalent outcomes.

⁶ Inserted by section 69 of the Credit Union and Co-operation with Overseas Regulators Act 2012.

‘regulated financial services provider’ (RFSP) within the meaning of section 2(1) of the Central Bank Act 1942.⁷ Such a branch will also be considered to fall within the definition of a ‘Union branch’ in Regulation 3(1) of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. 289 of 2015).⁸

1.18. Where the Central Bank grants an authorisation to an RCI to operate a branch, section 9A(6) of the 1971 Act specifies that this shall not constitute a warranty regarding the solvency of the RCI to which the authorisation has been granted.

1.19. Where the Central Bank grants such authorisations, it is obliged to notify the European Commission, the European Banking Authority (EBA) and the European Banking Committee.

Cross-Border Banks in Ireland

1.20. Banks headquartered outside the State may establish in Ireland on a subsidiary or branch basis.

⁷ Under the 1942 Act ‘regulated financial service provider’ means—

(a) a financial service provider whose business is subject to regulation by the Bank under this Act or under a designated enactment or a designated statutory instrument,

(b) a financial service provider whose business is subject to regulation by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank under this Act or under a designated enactment or designated statutory instrument, or

(bb) a financial service provider whose business is subject to supervision by the ECB under a designated enactment, or

(c) in relation to Part VIIIB only, any other financial service provider of a class specified in the regulations for the purposes of this paragraph.

⁸ Under S.I. 289 of 2015 ‘Union branch’ means a branch of a third-country institution located in a Member State.

Subsidiaries

1.21. A subsidiary is a distinct legal entity from its parent and, therefore, is subject to, *inter alia*, all relevant prudential requirements on an individual or sub-consolidated basis (subject to any supervisory waivers granted) under CRR and S.I. 158 of 2014. Where relevant⁹ the Central Bank, or the European Central Bank (ECB) as applicable, is subject to certain cooperation and coordination arrangements with the regulators responsible for supervising the parent of an EEA subsidiary (the consolidating supervisor). This includes participating in supervisory colleges responsible for the group and reaching decisions with the other relevant competent authorities on institution-specific prudential requirements.¹⁰

EEA Branches

1.22. A branch is defined under Article 4(1), point (17) of CRR as: “a place of business which forms a *legally dependent*¹¹ part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions”. As such, a branch is effectively an extension of the credit institution to which it is affiliated, i.e. it is not a separate

⁹ Per Article 17 of Council Regulation (EU) No 1024/2013 (SSM Regulation - SSMR), where an SSM-headquartered significant group has a subsidiary operation in Ireland, the ECB effectively performs the role of both home and host prudential supervisor, albeit subject to internal SSM cooperation with the Central Bank in the context of joint supervisory teams (JSTs).

¹⁰ See, e.g., Part 6, Chapter 3 of S.I. 158 of 2014 and Part II Title II of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the SSM between the ECB and national competent authorities and with national designated authorities (SSM Framework Regulation –SSMFR)

¹¹ Emphasis added.

legal entity in its own right for regulatory purposes.

1.23. In the case of EEA branches of credit institutions authorised within the EEA, these enjoy ‘passporting’ rights within the EEA, meaning they cannot be subject to additional authorisation requirements when establishing in Ireland.¹²

1.24. Where relevant,¹³ the Central Bank (or the ECB as applicable) cooperates with the ‘home’ authority for EEA branches, although ultimate accountability for, *inter alia*, prudential and resolution oversight of an EEA branch rests with the home authority.

1.25. As ‘host’ authority for EEA branches, the Central Bank (or the ECB as applicable) nonetheless participates in relevant supervisory colleges and is conferred with certain local responsibilities and powers. For instance, the Central Bank (or the ECB as applicable) may carry out checks and inspections of EEA branches,¹⁴ as well as take certain precautionary measures where necessary.¹⁵ The Central Bank (or the ECB as applicable) may also, for instance, impose ongoing reporting requirements on EEA branches.¹⁶

1.26. EEA branches are subject to local consumer protection,¹⁷ anti-money

laundering¹⁸ and other relevant conduct of business requirements. In addition, EEA branches are encompassed by relevant EU recovery and resolution requirements.¹⁹

1.27. There are a substantial number of EEA branches currently established in the State. In most cases, at present the businesses of these branches tend not to encompass the provision of retail banking services.

Third Country Branches

1.28. In contrast to EEA branches, it is necessary for RCIs to obtain authorisation to operate a branch directly in Ireland under section 9A of the 1971 Act. The 1971 Act outlines the baseline conditions for such authorisations. However, the 1971 Act itself does not elaborate on the fuller range of potentially relevant considerations with respect to authorisation and local oversight. Therefore, these matters are further elaborated in this Policy Statement and are guided by the Central Bank’s broader statutory objectives.

2 The Central Bank’s General Risk Tolerance

2.1. In promoting its overarching statutory objectives of Safeguarding Stability and Protecting Consumers, a key focus of the Central Bank is the degree of damage a firm could cause to the financial system, economy and citizens were it to fail, i.e. the impact of a firm’s failure. Some firms must be allowed to fail in a functioning market economy, subject to deployment of recovery and/or resolution tools where relevant.

¹² Although certain notification and due diligence requirements apply. See, e.g., Regulation 34 of S.I. 158 and Part II Title III of SSMFR.

¹³ Again (cf footnote 9), in practice the ECB discharges the prudential functions of the home and host authorities in the case of an SSM-headquartered significant group having branches in Ireland, albeit subject to internal SSM cooperation with the Central Bank in JSTs.

¹⁴ See, e.g., Regulation 50 of S.I. 158.

¹⁵ See, e.g., Regulations 40-42 of S.I. 158.

¹⁶ See, e.g., Regulation 39 of S.I. 158.

¹⁷ For example, the Consumer Protection Code 2012 and the Code of Conduct on Mortgage Arrears 2013.

¹⁸ See, e.g., section 25(6) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

¹⁹ S.I. 289 of 2015.

2.2. The Central Bank can deliver most value through focusing its energies on those firms which are most significant and on the risks that pose the greatest threat to financial stability and consumers, i.e. firms engaging in HIAs (as defined in paragraph 3.32).

2.3. Under its Probability Risk and Impact Assessment System (PRISM), for credit institutions the Central Bank may typically measure impact of failure with reference to certain criteria, such as total balance (and off-balance) sheet size, type and concentration of lending, intra-financial system assets and the retail deposit base. For securities and investment firms, the Central Bank may typically measure impact of failure with reference to assets under management, the number of customers involved, as well as the value of client monies held by the firm, for instance.

2.4. In addition to assessing the impact of firms' failure, typically the Central Bank also assesses the probability of firms' failure. Probability risk is an indication of the likelihood of a firm failing, regardless of the damage such a failure might actually cause. As such, probability risk is distinct from impact of failure – a firm that may be high impact may have low probability of failure and vice versa. In judging probability risk, the Central Bank has regard to certain risk categories and sub-categories, including liquidity risk, governance risk and strategy/business model risk for example.

General Assessment Considerations for Prospective Branches

2.5. In the case of branches specifically, the potential domestic impact of their failure or closure may, to a certain extent, be independently assessable by the Central Bank at point of establishment.

2.6. However, it is not possible for the Central Bank to assess the probability risk of a branch failure/closure independently of broader group dynamics. This follows from the fact that a branch is not a separate legal entity in its own right; it is essentially an extension of the RCI in the State.

2.7. In contrast to a subsidiary, which will generally be required to meet relevant prudential requirements in its own right, a branch will be more dependent upon, and affected by, the prudential position of the RCI itself. If the RCI fails, the branch fails. The Central Bank is neither the responsible prudential supervisory authority nor responsible resolution authority for the RCI – these obligations rest with the RCOOA.

2.8. Therefore, it is pivotal that the Central Bank is satisfied in relation to at least the following matters (which will influence the Central Bank's risk tolerance for hosting the prospective branch):²⁰

a) Whether relevant regulatory and supervisory requirements and arrangements in the COO correspond, such that they deliver equivalent outcomes, to requirements and arrangements in the State;

b) Verification of the business model and prudential soundness of the RCI, as well as acceptance by the RCOOA of its/their responsibilities. The Central Bank will generally prefer to have a MoU in place with the RCOOA prior to receiving an application from the RCI. The Central Bank will, in any event, expect a MoU to be concluded with the RCOOA before a formal decision may be taken to grant an authorisation. The Central Bank generally expects to conclude umbrella MoUs with RCOOAs encompassing all relevant areas,

²⁰ These are each further elaborated in section 3.

including prudential supervision, resolution and DGS matters;

(c) Extent to which the branch will engage in HIAs;

(d) Arrangements for recovery and resolvability of the RCI, including the branch.

2.9. An illustrative decision tree is set out in Box 1 (page 9). However, this decision tree should not be construed as a binary illustration. There will inevitably be interactions and overlaps between the various elements, as well as nuances which cannot be fully captured in a decision tree.

2.10. The Central Bank expects that initial applications by RCIs to establish branches in Ireland will be sufficiently developed at point of submission to enable the Central Bank to undertake an informed review. The onus is on the applicant to demonstrate to the Central Bank that all relevant requirements, as elaborated in this Policy Statement, are met. The Central Bank will not assume responsibility for assisting applicants with drafting their application to the Central Bank.

2.11. Where an RCI has submitted an application to the Central Bank, that RCI will be designated one point of contact at the Central Bank who will be responsible for all communications between the applicant and the Central Bank. The RCI will not be entitled to directly contact any other staff member of the Central Bank during the review process without the explicit prior approval of the designated person.

3 Establishing whether a prospective branch meets the requirements of the 1971 Act and is within the Central Bank's Risk Tolerance

3.1. This section further specifies the factors which will be investigated by the Central Bank

when assessing each of the overarching considerations outlined in the previous section.

Corresponding Requirements Delivering Equivalent Outcomes

3.2. Given that the prospective branch and the RCI will be closely intertwined, before proceeding to review an RCI's application for authorisation the Central Bank must be satisfied that the COO regulatory and supervisory regime corresponds, such that it delivers equivalent outcomes, to the Irish regime.

3.3. The Central Bank expects that the RCI should nominate an independent assessor to carry out the assessments referred to in paragraphs 3.5. – 3.20. The Central Bank also expects that the RCI should consult the Central Bank in advance on the proposed nominee, as well as the terms of reference for the assessment.

3.4. The Central Bank will draw its own conclusions regarding the COO regulatory regime and supervision arrangements and, therefore, reserves the right to appoint a third party to assess or verify whether the relevant requirements are met or to take such other steps as it deems appropriate.

Prudential Banking

3.5. The Central Bank will require an independent detailed assessment confirming whether the prudential regulatory or administrative provisions applicable in the COO correspond, such that they deliver equivalent outcomes, to the requirements stipulated in CRR, S.I. 158 of 2014, S.I. 159 of 2014, the Central Bank Acts, as well as any relevant Commission delegated regulations stemming from CRR and CRD IV. This will include (but will not necessarily be limited to) an assessment of:

- Capital requirements, including whether the quality and quantity of capital requirements (also encompassing buffers) in the COO correspond to those set out in CRR and S.I. 158 of 2014;
- Liquidity requirements, including whether the COO has implemented a liquidity coverage requirement corresponding to that applicable under Commission Delegated Regulation (EU) No 2015/61;
- Large exposure requirements, including whether the COO has a regime for large exposure limits corresponding to that set out in CRR and S.I. 158 of 2014;
- Leverage requirements, including whether the COO has a regime for calculating the leverage ratio and addressing risks of excessive leverage corresponding to that set out in CRR and S.I. 158 of 2014;
- Acquiring transactions requirements, including whether the COO has a regulatory regime for assessing the suitability of shareholders which corresponds to that set out in S.I. 158 of 2014;
- Corporate governance requirements, including whether the COO has a regulatory regime for assessing the fitness and probity of office holders corresponding to fitness and probity standards applicable under section 50 of the Central Bank Reform Act 2010;
- Professional secrecy, including whether the range of authorities and entities with which the RCOOA is entitled to share confidential information corresponds to those under section 33AK of the Central Bank Act 1942;
- Sanctioning, including whether administrative and/or criminal sanctioning tools,

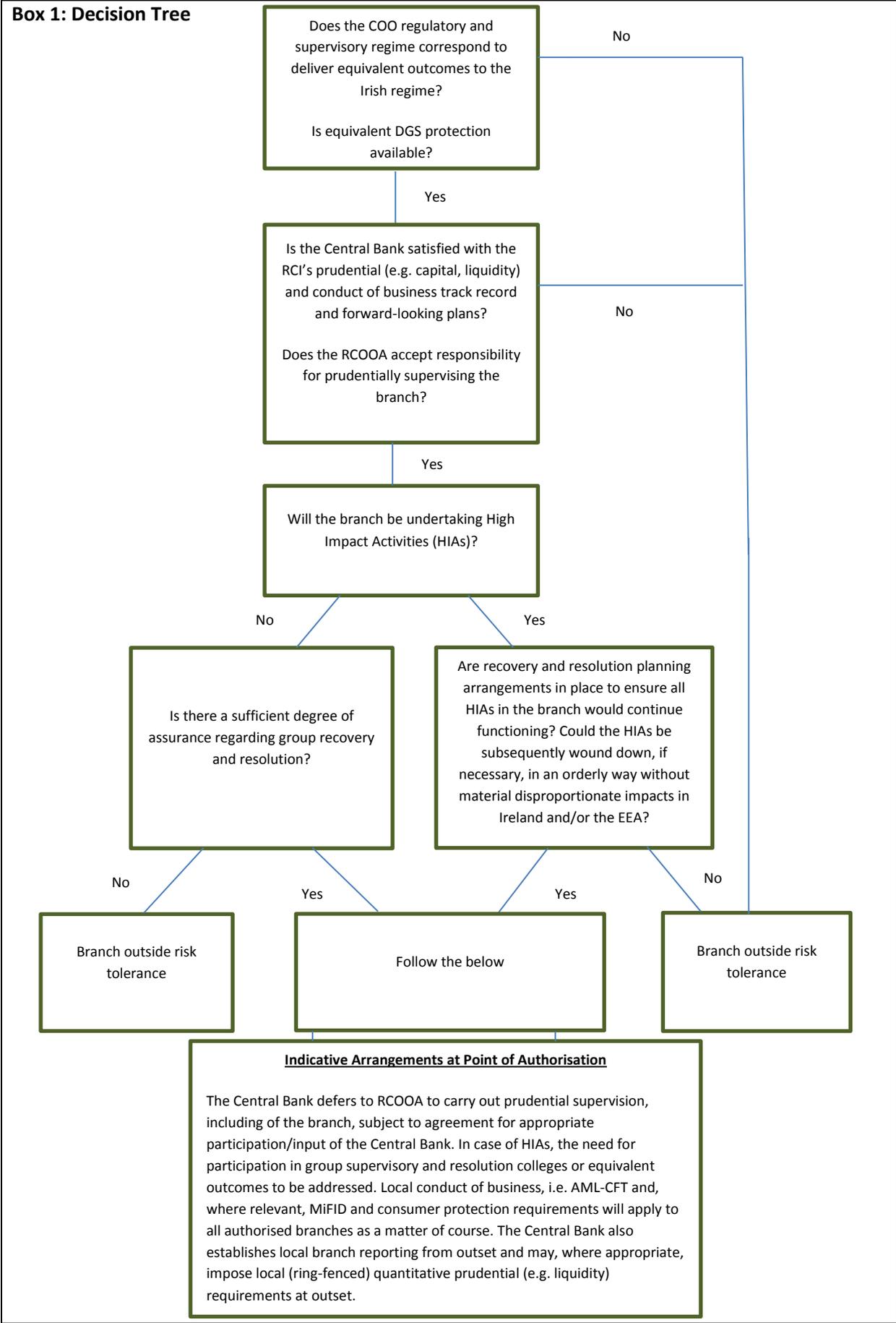
corresponding to those in S.I. 158 of 2014, S.I. 159 of 2014, S.I. 289 of 2015 and Part IIIC of the Central Bank Act 1942, are available in the COO.

3.6. The assessment of prudential requirements will also focus on whether the COO supervisory regime corresponds to that in Ireland.

3.7. The assessment of the COO supervisory regime will focus, in particular, on whether the supervisory resources, level of supervisory intensity and supervisory outcomes in the COO for the RCI correspond to those which would apply to Irish-authorized institutions of comparable size, internal organisation, nature, scope and complexity. The COO regime for Supervisory Review and Evaluation more broadly will also be assessed.

3.8. In forming its conclusions in this area, the Central Bank will at least have regard to the following:

- Any relevant third country equivalence assessments undertaken by the EBA or the European Commission;
- The most recent Basel Committee on Banking Supervision (BCBS) Regulatory Consistency Assessment Programme Reports relevant to the COO;
- The most recent International Monetary Fund (IMF) Report on the Observance of Standards and Codes;
- The most recent IMF Financial Sector Assessment Programme Report relevant to the COO;
- Any Financial Stability Board (FSB) or other BCBS prudential assessments or materials relevant to the COO.



DGS

3.9. The Central Bank will require an independent detailed assessment confirming whether protection of deposits with the prospective branch is equivalent to S.I. 516 of 2015, as well as any Commission delegated regulations stemming from Directive 2014/49/EU.

3.10. In forming its conclusions on DGS equivalence, the Central Bank will at least have regard to the following:

- Core Principles for Effective Deposit Insurance Systems issued by the International Association of Deposit Insurers (IADI), particularly any specific assessments relevant to the COO DGS;
- Any other IADI or FSB assessments or materials relevant to the COO DGS;
- Any assessments or materials issued by the European Forum of Deposit Insurers relevant to the COO DGS.

3.11. If the Central Bank determines that the COO DGS is at least equivalent, the Central Bank will seek an agreement specifically with the COO DGS provider, if such an agreement is deemed favourable to depositors. Such agreements would likely follow the provisions relating to home/host arrangements outlined in Regulation 27 of S.I. 516 of 2015.

Recovery/Resolution Framework

3.12. The Central Bank will require an independent detailed assessment confirming whether the COO has in place regulatory or administrative provisions for recovery and resolution of institutions which correspond, such that they deliver equivalent outcomes, to S.I. 289 of 2015, as well as any relevant Commission delegated regulations stemming from Directive 2014/59/EU.

3.13. In forming its conclusions on recovery and resolution, the Central Bank will at least have regard to the following:

- Any FSB assessments or materials relevant to the recovery and/or resolution regime of the COO.

EU Markets in Financial Instruments Directive/Regulation ('MiFID') activities

3.14. Where applicable to the proposed business model of the prospective branch, the Central Bank will require an independent detailed assessment confirming whether relevant markets in financial instruments provisions, including client asset requirements, in the COO correspond, such that they deliver equivalent outcomes, to those applicable in Ireland. This includes such requirements under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. 60/2007)²¹ and/or the Central Bank's domestic client assets requirements.

3.15. Where relevant to the proposed business model of the prospective branch, the Central Bank may also require an independent detailed assessment commissioned by the RCI and/or the RCOOA demonstrating that provisions for investor compensation in the COO correspond, such that they deliver equivalent outcomes, to requirements in the Investor Compensation Act 1998.

3.16. In forming its conclusions on markets in financial instruments and investor compensation, the Central Bank will at least have regard to the following:

- Objectives and Principles of Securities Regulation issued by the International Organization of Securities Commissions

²¹ And Directive 2014/65/EU (MiFID II), once transposed.

(IOSCO), particularly any specific assessments relevant to the COO;

- IOSCO Recommendations Regarding the Protection of Client Assets, particularly any specific assessments relevant to the COO.

Anti-Money Laundering and Countering the Financing of Terrorism (AML-CFT)

3.17. The Central Bank will require an independent detailed assessment confirming whether the COO has in place regulatory or administrative provisions for the prevention of money laundering and countering the financing of terrorism that correspond, such that they deliver equivalent outcomes, to the provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (CJA 2010), as well as any Commission delegated regulations in this area.

3.18. In forming its conclusions on AML-CFT, the Central Bank will at least have regard to the following:

- Any Financial Action Task Force assessments or materials relevant to the AML-CFT regime of the COO.

3.19. The Central Bank will also require the RCI to complete a pre-authorisation risk assessment (REQ), which may be followed by a more detailed examination depending on the Central Bank's AML-CFT risk categorisation of the RCI.

Consumer Protection

3.20. Where relevant to the proposed business model of the prospective branch, the Central Bank will require an independent detailed assessment confirming whether the COO has in place regulatory or administrative provisions with respect to conduct of business in the COO which correspond, such that they deliver equivalent outcomes, to such requirements

applicable in the State. The Central Bank will also expect the RCI to demonstrate its track record in meeting such conduct of business standards.

3.21. In forming its overall conclusions on conduct of business, the Central Bank will at least have regard to the following:

- The extent to which the Central Bank is satisfied that the Board and senior management of the RCI have demonstrated how they are aligning their culture and behaviour with consumers' interests.

Expected Outcomes of Assessment

3.22. The outlined assessments in paragraphs 3.5. – 3.21. will seek to ascertain the extent to which regulatory and supervisory requirements and arrangements in the COO correspond, such that they deliver equivalent outcomes, to those in the State.

3.23. Any deficiencies in the COO regulatory and supervisory frameworks will be afforded careful consideration and weight by the Central Bank. Where deficiencies in any particular area are deemed by the Central Bank to outweigh positive assessment outcomes in other areas, the Central Bank will be minded to discontinue the application at this stage.

3.24. The Central Bank considers that to grant authorisation where there are unacceptable deficiencies in the COO regulatory and/or supervisory framework would be incompatible with the 1971 Act and tend to run against the orderly and proper regulation of banking in the State.

Other Relevant Factors

3.25. The Central Bank reserves the right to consider a broader range of regulatory areas, as well as other relevant factors, for the purposes of forming its overall conclusions.

Other relevant factors may include, for example, country risk.

3.26. Assuming the branch is ultimately authorised, the Central Bank also reserves the right to undertake a periodic review as to whether all relevant corresponding requirements continue to be met. If such a review concludes that the relevant corresponding requirements are no longer met, the Central Bank reserves the right to pursue remedial measures, up to and including revocation of the authorisation in accordance with section 9C(1)(e) of the 1971 Act.

3.27. It does not follow that the establishment of a branch in Ireland under the 1971 Act will imply that other RCIs from that same jurisdiction can necessarily operate branches in Ireland. Each application for authorisation will be subject to assessment in its own right. Nevertheless, where a particular COO regulatory and supervisory regime has previously been subject to a positive assessment and the RCOOA is party to an existing home-host relationship with the Central Bank, this may be taken into account.

Regulatory Considerations and COO Acceptance of Responsibilities

3.28. Where the regulatory and supervisory regime of the COO corresponds, such that it delivers equivalent outcomes, the Central Bank will enter a formal dialogue with the RCOOA in relation to the RCI's authorisation application. In particular, the Central Bank will seek all relevant information from the RCOOA and/or the RCI to facilitate its assessment of:

- The extent to which the RCI has been in compliance with prudential and conduct of business requirements applicable to it. This will include, but will not be limited to, examination of the RCI's capital, liquidity and leverage

ratios, as well as any material conduct-related issues;

- Forward-looking projections with respect to the RCI's business model and regulatory compliance outlook;
- The RCI's governance and risk management arrangements;
- The shareholders of the RCI; and
- The proposed business model and scope of services of the prospective branch.

3.29. At this stage of the process, the Central Bank expects that the RCOOA should in principle acknowledge its role as prudential supervisor and resolution authority regarding the prospective branch, as well as its commitment to cooperating with the Central Bank. Where the RCOOA has not conveyed such assurances to the satisfaction of the Central Bank, the Central Bank will be minded to discontinue the application at this stage.

3.30. Where sufficient assurances have been conveyed by the RCOOA, the Central Bank's overall risk tolerance for hosting the branch will be influenced by the precise supervisory oversight and engagement model envisaged by the RCOOA for the branch, having particular regard to any HIAs to be undertaken. This is further elaborated in the next section.

High Impact Activities

3.31. The Central Bank's comfort level with the nature and intensity of prudential regulatory and supervisory oversight envisaged by the RCOOA will be affected by the extent to which the branch will be undertaking HIAs. Therefore, assessments of any HIAs will heavily influence the Central Bank's overall/ultimate risk tolerance assessment with respect to a prospective authorisation.

3.32. As a general principle, the Central Bank will consider that a HIA arises in relation to:

activities, services or operations the discontinuance of which is likely, in the State or in one or more other EEA Member States, to lead to any or all of the following:

- disruption of services that are essential to the real economy;
- financial instability;
- negative impacts for consumers;
- an undermining of confidence in the Irish financial sector;

due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of the branch, with regard to the substitutability of those activities, services or operations.

3.33. Depending on the proposed business model of the branch, the Central Bank may deem that HIAs are being undertaken where they may carry financial stability implications in a broader (i.e. regional) context. In this regard, the Central Bank must remain especially cognisant of its wider financial stability responsibilities under EU law.²²

3.34. For the purposes of assessing the extent to which a prospective branch may undertake HIAs relevant to domestic and/or broader financial stability, the Central Bank will, to the extent possible and appropriate, deploy certain standard criteria and indicators (see Box 2). In so doing, the Central Bank may have regard to prevailing approaches and definitions

²² See, e.g., Article 3(3) of the Statute of the European System of Central Banks; Article 3 of Regulation (EU) No 1092/2010; Article 2 of Regulation (EU) No 1093/2010 and Regulation (EU) No 1095/2010.

developed at EU²³ and/or international level in this area.²⁴

3.35. While the likely balance sheet size of a prospective branch will not *solely* determine the Central Bank's risk tolerance in relation to an authorisation, balance sheet size may be a factor in determining whether the branch is compatible with the Central Bank's risk tolerance in the round, particularly where the branch also intends to engage in one or more HIAs.

3.36. The Central Bank generally expects that prospective branches will not engage in retail banking activities.

3.37. In assessing whether the activities of a branch proposing to engage in retail banking are compatible with the Central Bank's risk tolerance, the Central Bank may at least consider:

- The value (or likely value) and types of transactional (e.g. current) accounts;
- The number (or likely number) of transactional account customers;
- Intention to engage in retail lending;
- Planned growth of such activities in future.

3.38. Where a branch is authorised to engage in retail banking activities, these will be designated as HIAs by the Central Bank as a matter of course.

3.39. Where, having particular regard to any identified HIAs, the RCOOA is not prepared to

²³ See, e.g., EBA, *Technical advice on the delegated acts on critical functions and core business lines* (6 March 2015); *Guidelines on the Assessment of Other Systemically Important Institutions* (16 December 2014).

²⁴ See, e.g., FSB, *Guidance on Identification of Critical Functions and Critical Shared Services* (16 July 2013).

BOX 2

CRITERIA

INDICATORS (ILLUSTRATIVE)

INDICATIVE ASSESSMENT CONSIDERATIONS

ABSOLUTE SIZE AND RELATIVE SIZE

Total Assets

Total assets/Irish gross domestic product

Share of group total assets

(to the extent measurable prior to authorization)

Where a prospective branch is assessed to be large in absolute and/or relative terms, and also taking into account any HIAs to be undertaken, this will influence the Central Bank's risk tolerance.

Intention to provide payment and/or clearing and/or settlement and/or asset custody and/or securities underwriting services to Irish or EU clients

Where the branch intends to provide any of these services in the Irish or EU context, the branch may be considered by the Central Bank to be engaged in a HIA with respect to the applicable activity on either a domestic or regional basis.

IMPORTANCE

(INCLUDING SUBSTITUTABILITY/
FINANCIAL SYSTEM INFRASTRUCTURE/
RISK OF REPUTATIONAL CONTAGION)

Intention to accept private sector deposits or client assets from, e.g., any or all of the following:

- Irish/EEA/third country retail/SME customers
- Irish/EEA/third country non-financial corporate customers

Where the branch intends to accept deposits or client assets from retail/SME customers (irrespective of location) and/or credit unions and/or non-financial corporates (irrespective of location) and/or Irish/EEA financial counterparties, the Central Bank may consider the branch to be engaged in a HIA with respect to the applicable activity.

Intention to offer private sector loans, e.g., to any or all of the following

- Irish/EEA retail/SME customers
- Irish/EEA non-financial corporate customers

Where the branch intends to engage in lending to Irish/EEA retail/SME customers and/or Irish/EEA non-financial corporates, the Central Bank may consider the branch to be engaged in a HIA with respect to the applicable activity.

COMPLEXITY/CROSS-BORDER ACTIVITY

Intention to engage in OTC derivative activity

- Nature of planned OTC derivative activities (i.e. interest rate, foreign exchange, credit default)
- Whether types of OTC derivatives will likely be eligible for central clearing with a qualifying central clearing counterparty

Where the branch intends to undertake OTC derivative activities, the Central Bank will have regard to the likely nature of those activities, extent to which they will be eligible for central clearing etc. Depending on the estimated complexity and proportion of group OTC derivative activity, the Central Bank may consider the branch to be engaged in a HIA in this regard.

Cross-jurisdictional liabilities and claims
(to the extent measurable prior to authorisation)

The extent to which the branch is likely to be exposed to counterparties outside Ireland may be a relevant factor

- Geographical breakdown of planned branch activities/number of jurisdictions in which active
- Likely types and locations of counterparties

when assessing certain branch business models. As such, the Central Bank reserves the right to determine that a branch is engaged in HIAs in a broader (i.e. regional or global) context, where the branch plans to engage in a material level of activity on a cross-border basis, especially where this is high relative to overall group activities.

For these purposes, the Central Bank may consider the materiality threshold to be met where:

- the ratio of the branch's cross-border assets to its total assets is deemed likely to exceed 20%;
- the ratio of the branch's cross-border liabilities to its total liabilities is deemed likely to exceed 20%.

INTERCONNECTEDNESS

Intra financial system assets and liabilities

- Securities financing transactions (e.g. securities lending, repos) with other financial institutions
- OTC derivative activities with other financial institutions
- Holdings of financial system securities
- Deposits with financial institutions and deposits from financial institutions
- Likely types and locations of counterparties
 - Irish/EEA corporate
 - Irish/EEA financial
 - Third country corporate
 - Third country financial

Financial distress at one financial institution can materially increase the likelihood of distress at other firms, given networks of contractual obligations. A branch's systemic impact on a domestic, regional or global level may be positively correlated with its interconnectedness vis-à-vis other financial institutions.

Therefore, to the extent measurable, the Central Bank will afford consideration as to whether a branch is likely to become interconnected to such an extent that it will likely be engaged in one or more HIAs at a national, regional or global level.

The concentration/materiality of such activities undertaken by the branch relative to the broader group of which it is part will also be a relevant consideration in this regard.

acknowledge its responsibilities as prudential supervisor and/or lacks willingness to cooperate with the Central Bank to a satisfactory degree, the Central Bank will be minded not to authorise the RCI to operate a branch. The Central Bank deems that authorisation in these circumstances would tend to run against the orderly and proper regulation of banking in the State.²⁵

Recovery and Resolvability

3.40. Recovery and resolvability considerations will form a central pillar of the Central Bank's assessment and will thus heavily influence the Central Bank's overall risk tolerance in relation to an authorisation. The Central Bank considers that to authorise an RCI to operate a branch, despite insufficient arrangements around recovery and resolvability, would tend to run against the orderly and proper regulation of banking in the State.²⁶

3.41. The Central Bank will expect to receive a copy of the full resolution plan of the RCI, particularly those parts relating to the prospective Irish branch.

3.42. The Central Bank must be satisfied that resolution planning arrangements are in place to ensure any HIAs in the branch would continue functioning and could be subsequently wound down, if necessary, in an orderly way without material disproportionate impacts in Ireland and/or the EEA.

3.43. The Central Bank expects that where an RCI's existing recovery and/or resolution plan does not encompass the prospective branch and any HIAs to be undertaken, that plan will be updated in the context of the RCI's application, in order to ensure that the

prospective branch is encompassed to the satisfaction of the Central Bank.

3.44. The Central Bank's assessments with respect to recovery and resolvability will be case-by-case and forward-looking in nature. As such, the precise level of assurance and information the Central Bank may seek will be contingent upon the nature, scale and complexity of the proposed activities of the prospective branch. The degree to which the branch may engage in HIAs will therefore be an important factor in this respect.

3.45. The types of assurances sought by the Central Bank around recovery and resolvability may encompass at least the following:

- A clear explanation as to why a particular activity is part of the RCI's business model and why it is appropriate for that activity to be conducted in a branch, especially where group-critical services will reside in the branch;
- An understanding of the recovery and resolution plans for the group and a clear appreciation for how the branch fits into those plans, including how any impediments to resolvability of the branch have been addressed;
- A clear plan for continuity of service for any particular HIA, including details on how the relevant activity would be resolved and funded in an orderly manner in a resolution event;
- An understanding of how access by the branch to critical systems and data managed in the COO would be maintained in resolution; and
- The quantum, composition and type of loss absorbing capacity (LAC) in the RCI, and how the level of this LAC compares to minimum requirement for own funds and eligible liabilities (MREL) levels of relevant Irish/EEA institutions.

²⁵ Section 9B(1) of the 1971 Act.

²⁶ Section 9B(1) of the 1971 Act.

3.46. Where a HIA to be undertaken by the branch may be relevant to regional financial stability (rather than just Irish financial stability), it is the Central Bank's expectation, having regard to its EU law obligations,²⁷ that the RCOOA should share the group recovery and resolution plans encompassing the branch.

3.47. The Central Bank reserves the right to undertake a resolution scenario assessment and expects that the applicant and/or RCOOA should cooperate in that regard.

4 Authorisation and Oversight

4.1. Where the Central Bank has assessed that:

- Relevant regulatory and supervisory arrangements in the COO correspond, such that they deliver equivalent outcomes;
- The RCOOA is prepared to accept responsibility for prudential and resolution oversight of the branch and to cooperate with the Central Bank;
- The recovery and resolution planning arrangements with respect to the branch are acceptable to the Central Bank in the circumstances, having regard to the extent to which the branch will be engaging in HIAs on either a domestic or broader (i.e. regional) basis; and
- The RCI has satisfactorily demonstrated its capacity to meet the Central Bank's relevant local (e.g. conduct) requirements (see, e.g., paragraphs 4.13.-4.21.),

the Central Bank will, prior to granting an authorisation, require a firm-specific agreement with the RCOOA governing the precise division of responsibilities and informational exchange with respect to the

prospective branch. The Central Bank expects that such agreements should typically include at least:

- A commitment by the RCOOA to dedicate supervisory resources, which are sufficient in the opinion of the Central Bank, to supervise the branch;
- A clear acceptance by the RCOOA of its responsibility to ensure, on an ongoing basis, that the RCI's entire-firm capital and liquidity requirements are sufficient and adequately distributed to cover the specific risks in the branch's business, having particular regard to any HIAs;
- Provision for regular sharing by the RCOOA of the RCI's capital and liquidity information with the Central Bank;
- An undertaking by the RCOOA to ensure that internal group management and controls for key risks (e.g. credit, market), as well as the RCI's internal audit function, sufficiently cover the branch's operations;
- Provision for regular confirmation from the RCOOA that internal group corporate governance arrangements are appropriate for overseeing the activities of the branch;
- Provision for exchange of information with the RCOOA around Pillar 2 reviews and any Risk Mitigation Programmes (or equivalent) relevant to the branch;
- An undertaking by the RCOOA that the Central Bank will be consulted, particularly in relation to the suitability of prospective shareholders, should the RCI become subject to an acquiring transaction;
- Agreement to immediately share details of at least any:
 - material deterioration of the RCI's prudential position;

²⁷ See footnote 22.

- early intervention measures taken by the RCOOA in relation to the RCI;
- opening of any investigation by the RCOOA relevant to the branch and which could result in administrative or criminal sanctions. In this respect, the Central Bank may seek to specifically include arrangements for cooperation/information sharing in the event that the Central Bank pursues an enforcement action against the branch;
- The matters referred to in Regulation 161(4) of S.I. 289 of 2015 with respect to ongoing resolution-related considerations;
- Central Bank membership of supervisory and resolution colleges, as well as crisis management groups (CMGs), where relevant;
- A commitment by the RCOOA to inform the Central Bank of any changes to local laws or regulations of relevance to the corresponding regulatory and supervisory assessment performed prior to authorisation.

4.2. For the above purposes, the Central Bank will have regard to any pre-existing Union or EBA cooperation agreements with the RCOOA in question, for example in accordance with Article 33 of Regulation (EU) No 1093/2010, Article 47(3) of CRD IV, and Article 93 or Article 97(2) of Directive 2014/59/EU.

4.3. Where the Central Bank is not satisfied that an acceptable firm-specific agreement can be concluded with the RCOOA, the Central Bank will be minded to discontinue the application at this stage. The Central Bank considers that to authorise a branch in the absence of an acceptable firm-specific agreement with the RCOOA would tend to run against the orderly and proper regulation of banking in the State.

4.4. Assuming it is possible to conclude an acceptable firm-specific agreement with the RCOOA, as a general principle the Central Bank will be prepared to support the RCOOA's oversight of the branch. Given that a branch is not a separate legal entity, but rather an extension of the RCI, the Central Bank will not, however, itself accept responsibility for prudential oversight of the branch's activities. The appropriate nature and extent of the Central Bank's local support to the RCOOA for overseeing a branch will be inherently related to broader supervisory dynamics in relation to the RCI.

4.5. In its role of supporting the RCOOA's oversight of the branch and devising an appropriate engagement model, the Central Bank will have regard to at least:

- The business model of the branch and the local materiality of the types of activities to be undertaken, particularly whether these are deemed to be HIAs in accordance with the methodology in section 3; and
- The relationship between the branch's activities and the RCI's overall business model, including the extent to which the branch's activities are material in proportion to wider group activities.

4.6. The Central Bank may, where appropriate on a case-by-case basis and having regard to the nature, scale and complexity of the branch, impose specific local requirements (e.g. liquidity) on the branch at point of authorisation. The precise nature of any such requirements may be subject to change over time to reflect evolutions in the applicable legislative frameworks and/or the branch's business model.

4.7. In its capacity of supporting the RCOOA's oversight of the branch, the Central Bank will, in particular, expect to be admitted to the

relevant supervisory and resolution colleges as a participant. Where a branch is deemed by the Central Bank to be engaged in HIAs and there is at least one other subsidiary or branch established in the EEA by the same RCI, the Central Bank may, where it is not admitted to the relevant colleges and CMG, seek to establish a separate EEA resolution college with the other relevant EEA resolution authorities.²⁸

Ongoing Prudential Banking and Resolution Oversight

4.8. As outlined in paragraphs 4.4. and 4.5., the Central Bank’s position in relation to prudential oversight is to support supervision by the RCOOA. In general, the Central Bank considers that the most effective way of doing this is by:

a) Remaining abreast of the prudential robustness and resolvability of the RCI (entire-firm) of which the branch forms part, based on regular meaningful engagement, periodic meetings and information sharing with the RCOOA;

b) Requiring the branch to submit local reports referred to in paragraph 4.21. These would be used as a basis for alerting the RCOOA to any concerns arising; and

c) Implementing the agreed supervisory engagement programme. This should, in addition to Central Bank cooperation with the RCOOA as outlined in paragraph 4.1., typically also include, but will not be limited to:

- Periodic meetings between the Central Bank and the relevant external auditors;
- Periodic Central Bank reviews of the branch’s internal risk and compliance arrangements;

- Periodic meetings between the Central Bank and the Branch Management Committee referred to in section 5; and
- Periodic meetings between the Central Bank and relevant RCI senior management.

4.9. Based on both the RCI entire-firm prudential information shared by the RCOOA, as well as local reporting, the Central Bank will remain alert to whether there are sufficiently robust strategies, policies, processes and systems in place for the identification, measurement, management and monitoring of specific risks to which the branch is exposed. In forming its views, the Central Bank may rely upon relevant criteria for evaluating specific risks, as set out in Regulations 67-75 of S.I. 158 of 2014 and/or the Central Bank’s PRISM framework for example.

4.10. Where:

- the branch has been subject to a change of ownership and/or there has been a material change in the branch’s business model; and/or
- there has been a change to relevant laws or regulations in the COO such that the corresponding regulatory and supervisory requirement has been undermined; and/or
- supervisory provisions applicable to the RCI have been materially altered; and/or
- the Central Bank identifies that an authorised branch’s activities have begun to pose an unacceptable risk to financial stability or have given rise to any other serious concern within the purview of the Central Bank,

the Central Bank will, in consultation with the RCOOA, seek to address these issues in an appropriate way; having regard to the

²⁸ Regulation 153 of S.I. 289 of 2015.

nature, scale and complexity of the branch. Remedial actions may include at least any of the following:

- Imposition of specific conditions (or amendment of existing conditions) on the authorisation, including in relation to prudential requirements;
- Use of the Central Bank's administrative sanctions procedures under Part IIIC of the Central Bank Act 1942;
- Use of the Central Bank's powers under Part 3 of the Central Bank Reform Act 2010;
- Pursuing criminal prosecution where a criminal offence may have been committed;
- Revocation of the authorisation.

4.11. As indicated in paragraphs 3.40-3.47, the Central Bank's approach is to secure a satisfactory level of assurance around the COO resolution regime and planning arrangements relevant to the branch, such that the Central Bank's statutory objectives are not endangered. Notwithstanding that, where the Central Bank deems it warranted, deployment of resolution tools to the branch on a local basis may be considered, pursuant to the Central Bank's powers under S.I. 289 of 2015.²⁹

4.12. Authorised branches will be required to contribute to the Irish (BRRD) Resolution Fund at least annually, in accordance with Part 7 of S.I. 289 of 2015. The aggregate annual target for contributions and the individual contribution amount is determined by the Central Bank.

Other Indicative Specific Requirements

4.13. Authorised branches will be subject to a number of other specific requirements, either

²⁹ See, e.g., Regulation 160 of S.I. 289 of 2015.

by virtue of falling within scope of such requirements as a matter of course (i.e. because they will be RFSPs) and/or by way of particular conditions on their authorisation.

4.14. The precise nature of any such requirements may be subject to change over time to reflect evolutions in the applicable legislative frameworks and/or the branch's activities. All authorised branches will be subject to a standard condition that their authorisation will be subject to the Central Bank's prerogative to periodically review whether the relevant corresponding regulatory and supervisory requirements continue to be met, as outlined in paragraph 3.26.

AML-CFT

4.15. Authorised branches will be subject to Irish AML-CFT obligations as a 'designated person' under the CJA 2010.³⁰

4.16. The regulatory requirements for designated persons under the CJA 2010 include customer due diligence, monitoring transactions, reporting suspicious transactions, record keeping, training of staff and adopting policies and procedures.

Consumer Protection

4.17. To the extent relevant to their business models, the following local consumer protection requirements will extend to authorised branches:

- Consumer Protection Code 2012;
- Minimum Competency Code 2011;
- Code of Conduct on Mortgage Arrears 2013;

³⁰ Section 25(6) CJA 2010 sets out that branches operating within the State are subject to AML-CFT requirements.

- Code of Conduct for Business Lending to Small and Medium Enterprises 2012;³¹
- Code of Conduct on Switching of Current Accounts;
- Consumer Credit Act 1995.

4.18. The Central Bank will require RCIs to have the necessary resources, policies and procedures, systems and control checks, including compliance checks, as well as staff training, that are necessary for compliance with the consumer protection and conduct of business requirements to be applied to the regulated activities of the branch from the proposed date of commencement of operations.

MiFID/Client Assets

4.19. To the extent relevant to their business models, requirements analogous to those applied under the MiFID regime, including the Central Bank's client asset requirements where appropriate,³² may be applied to authorised branches.

Other Requirements

4.20. The Central Bank may also impose other standard requirements on a branch by way of conditions on authorisation. Certain of these conditions may be imposed by the Central Bank for the purposes of reinforcing the firm-specific agreement with the RCOOA referred to in paragraph 4.1. Any authorisation conditions may be amended, supplemented or revoked by the Central Bank from time to time where this

is deemed to be in the interest of the proper and orderly regulation of banking.³³

4.21. For the purposes of facilitating local oversight of authorised branches, the Central Bank will, at a minimum, impose specific reporting requirements at point of authorisation.³⁴ These will be based on bespoke reporting returns developed for each branch in question. The Central Bank also reserves the right to require statistical reporting by authorised branches.

5 Internal Governance

5.1. In addition to the Central Bank's expectation that the RCI's internal governance and oversight arrangements appropriately incorporate the branch, key local corporate governance requirements will apply, with certain modifications, to authorised branches as a matter of course.

5.2. These requirements will be applied as a condition on authorisation and will be similar in many respects to those set out in the Central Bank's Corporate Governance Requirements for Credit Institutions. The precise range and types of requirements to be applied will be contingent upon the nature, scale and complexity of the branch, having particular regard to any HIAs undertaken.

Fitness and Probity Requirements

5.3. The Central Bank's Fitness and Probity Regime and Fitness and Probity Standards³⁵ will apply to authorised branches as a matter of course. The Branch Manager, who shall be the top executive responsible for every authorised branch, will be a Pre-Approval Controlled

³¹ This will be superseded by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-sized Enterprises) Regulations 2015 from July 2016.

³² E.g., S.I. No. 60 of 2007.

³³ Section 10(2A) of the 1971 Act.

³⁴ In accordance with section 22 of the Central Bank (Supervision and Enforcement) Act 2013.

³⁵ Issued pursuant to section 50 of the Central Bank Reform Act 2010.

Function (PCF) for these purposes. The Central Bank also generally expects authorised branches to appoint a Head of Finance, who will be a PCF.

Branch Management Committee

5.4. Subject to the overall responsibilities of the RCI board, a Branch Management Committee shall be established for each authorised branch and this committee will retain primary responsibility for corporate governance within the branch at all times. The full range of responsibilities and expectations of the Branch Management Committee will be specified by the Central Bank on a case-by-case basis.

5.5. At a minimum, the Branch Management Committee shall be responsible for the effective, prudent and ethical oversight of the branch. The Branch Management Committee is thus at least responsible for, *inter alia*, setting/overseeing:

- a) the business strategy for the branch;
- b) the strategy for the on-going management of material risks including, *inter-alia*, liquidity risk;
- c) a robust and transparent organisational structure with effective communication and reporting channels;
- d) a remuneration framework that is in line with the risk strategies of the branch; and
- e) an adequate and effective internal control framework, that includes well-functioning risk management, compliance and internal audit functions as well as an appropriate financial reporting and accounting framework.

Chief Risk Officer

5.6. The Central Bank generally expects authorised branches to appoint a Chief Risk Officer (CRO) with distinct responsibility for the

risk management function in the branch. The CRO will be a PCF.

5.7. The CRO should have the relevant expertise, qualifications and background to effectively perform their duties.

5.8. The CRO should, at minimum, be responsible for ensuring that the branch has effective processes in place to identify and manage the risks to which the branch is or might be exposed. The Central Bank reserves the right to further specify the responsibilities of a CRO on a case-by-case basis.

Compliance and Internal Audit Functions

5.9. The Central Bank generally expects that an authorised branch will establish and maintain a compliance function which is separate from that of the RCI. The Central Bank expects that such a function should be permanent, effective and operate independently from the other functions in the branch, as well as the RCI more broadly.

5.10. The Central Bank expects that such a function should generally have at least the following responsibilities:

- Monitoring, and on a regular basis assessing, the adequacy and effectiveness of measures and procedures put in place to, *inter alia*, detect any risk of failure by the branch to comply with its regulatory and supervisory obligations, as well as associated risks;
- Advising and assisting the relevant persons responsible for carrying out regulated activities to comply with the branch's regulatory obligations.

5.11. With a view to ensuring that a separate compliance function is capable of discharging its responsibilities properly and independently,

the Central Bank expects that at least the following conditions should generally be met:

- The compliance function has the necessary authority, resources, expertise and access to all relevant information;
- The relevant persons involved in the compliance functions should not be involved in the performance of services or activities they monitor;
- The method of determining the remuneration of the relevant persons involved in the compliance function should not compromise their objectivity.

5.12. The Central Bank will generally expect the branch to appoint a Head of Compliance. The Head of Compliance will be a PCF.

5.13. Having regard to the nature, scale and complexity of its activities, it may be appropriate for a branch to establish and maintain an internal audit function which is separate from that of the RCI. Where a branch establishes a separate internal audit function, or has been required by the Central Bank to do so, the Central Bank expects that such a function should be permanent, effective and operate independently from the other functions in the branch, as well as the RCI more broadly.

The Central Bank expects that such a function should generally have at least the following responsibilities:

- To establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the branch's systems, internal control mechanisms and arrangements;
- To issue recommendations based on the result of work carried out in accordance with the audit plan;

- To verify compliance with those recommendations; and
- To report in relation to internal audit matters pertaining to any remedial measures which have been taken with respect to identified deficiencies in the branch.

Where a branch has established a separate internal audit function, the Central Bank will generally expect the branch to appoint a Head of Internal Audit. The Head of Internal Audit will be a PCF.

Money Laundering Reporting Officer

5.14. Authorised branches shall appoint a Money Laundering Reporting Officer (MLRO) with responsibility for identifying and mitigating Money Laundering/Terrorist Financing (ML/TF) and Financial Sanctions (FS) risks. The MLRO should have the knowledge, skills and experience required to carry out the role. The MLRO shall be responsible for providing comprehensive and timely information on the branch's ML/TF/FS risks, which enables the Branch Management Committee to understand the overall risk profile of the branch.

5.15. Having regard to the nature, scale and complexity of its activities, it may also be appropriate for a branch to establish a position of Head of Compliance with responsibility for AML-CFT Legislation. Where the branch has established such a position, or is required by the Central Bank to do so, the Head of Compliance with responsibility for AML-CFT Legislation will be a PCF.

Outsourcing

5.16. A branch should, when relying on another entity for the performance of operational functions which are critical or important for the performance of regulated activities, listed activities or ancillary services on a continuous

and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk.

5.17. A branch should not undertake the outsourcing of important operational functions in such a way as to impair materially:

- The quality of its internal control; and
- The ability of the RCOOA and/or the Central Bank to monitor the branch's compliance with all regulatory and supervisory obligations.

5.18. The Central Bank will generally consider that an operational function is critical or important if a defect or failure in its performance would materially impair the continuing compliance of the branch with the conditions and obligations of its authorisation or its other regulatory and supervisory obligations, its financial performance, or the soundness or the continuity of its relevant services and activities, particularly any HIAs as referred to in section 3.

5.19. A branch should exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities. In particular, the Central Bank expects at least that:

- The service provider will, where required, co-operate with the RCOOA, the Central Bank and any other relevant competent authority in connection with the outsourced activities;
- The branch, relevant auditors, the RCOOA, the Central Bank and any other relevant competent authority have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and

- The branch and the service provider should 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.

5.20. A branch should ensure that the respective rights and obligations of the branch and the service provider are clearly allocated and set out in a written agreement.

5.21. A branch should make available on request to the RCOOA, the Central Bank and any other relevant competent authority all information necessary to enable supervision of the compliance of the performance of the outsourced activities with regulatory requirements.

5.22. A branch should notify the Central Bank when it intends to rely on any other entity for the performance of operational functions which are critical or important for the performance of relevant services and activities (especially any HIAs as referred to in section 3) on a continuous and satisfactory basis.

Compliance Statement

5.23. The Central Bank will require the RCI to submit to the Central Bank an annual compliance statement, approved by the RCI's Board of Directors, in relation to the branch's compliance with the internal corporate governance requirements applicable to the branch.

5.24. While the Central Bank recognises that a number of individuals may be responsible for ensuring compliance with the various requirements applicable to an authorised branch, the Central Bank deems it important to have one individual responsible for providing an overall annual attestation in this regard. The

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Central Bank considers that this should be the Head of Compliance or, where that position is not established, the CRO.³⁶

5.25. The Central Bank expects these attestations to state:

‘I confirm that [insert branch name] is in compliance with all relevant regulatory requirements applicable to it, including Central Bank requirements, and has been for the last twelve months’.

³⁶ Alternatively, the Central Bank reserves the right to require the Branch Manager to provide the annual attestation.

Annex

54. (1) In this section 'Member State authority or third country authority' means an authority in a jurisdiction other than that of the State duly authorised to perform functions similar to any one or more of the statutory functions of the Bank.

(2) At the request of a Member State authority or a third country authority to do so in relation to any matter, the Bank may-

(a) require information on the matter about which the Bank has required or could require the provision of information or the production of documents under any provision of financial services legislation, or

(b) authorise one or more than one authorised officer to exercise any of his or her powers for the purposes of investigating the matter.

(3) In deciding whether or not to exercise any of its powers under subsection (2), the Bank may take into account in particular:

(a) whether in the country or territory of the Member State authority or third country authority, corresponding assistance would be given to an authority duly authorised in the State to perform functions corresponding to functions exercised by the Member State authority or third country authority;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the State or involves the assertion of a jurisdiction not recognised by the State;

(c) the seriousness of the case and its importance to persons in the State;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(4) The Bank may decide that it will not exercise any of its powers under subsection (2) unless the Member State authority or third country authority undertakes to make such contribution towards the cost of such exercise as the Bank considers appropriate.

(5) Subsections (3) and (4) do not apply if the Bank considers that the exercise of its power is necessary to comply with any obligation created or arising by or under the Treaties governing the European Union.

(6) If the Bank authorises an authorised officer for the purposes of subsection (2)(b), the Bank may direct the authorised officer to permit a representative of the Member State authority or third country authority to attend, and take part in, any interview conducted for the purposes of the investigation of the matter concerned.

(7) A direction under subsection (6) is not to be given unless the Bank is satisfied that any information obtained by a Member State authority or third country authority as a result of the interview will be subject to obligations of non-disclosure of information similar to those imposed on the Bank in section 33AK of the Act of 1942.

(8) A person shall not be required for the purposes of the exercise of any power under this section to answer any question tending to incriminate the person.

Appendix (Glossary)

BCBS – Basel Committee on Banking Supervision

COO – Country of Origin

CRO – Chief Risk Officer

DGS – Deposit Guarantee Scheme

EBA – European Banking Authority

EEA – European Economic Area

FSB – Financial Stability Board

HIA – High Impact Activity

IADI – International Association of Deposit Insurers

IMF – International Monetary Fund

IOSCO – International Organization of Securities Commissions

LAC – Loss Absorbing Capacity

MLRO – Money Laundering Reporting Officer

MoU – Memorandum of Understanding

MREL - Minimum Requirement for Own Funds and Eligible Liabilities

RCI - Relevant Credit Institution

RCOOA – Relevant Country of Origin Authority(ies)

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