

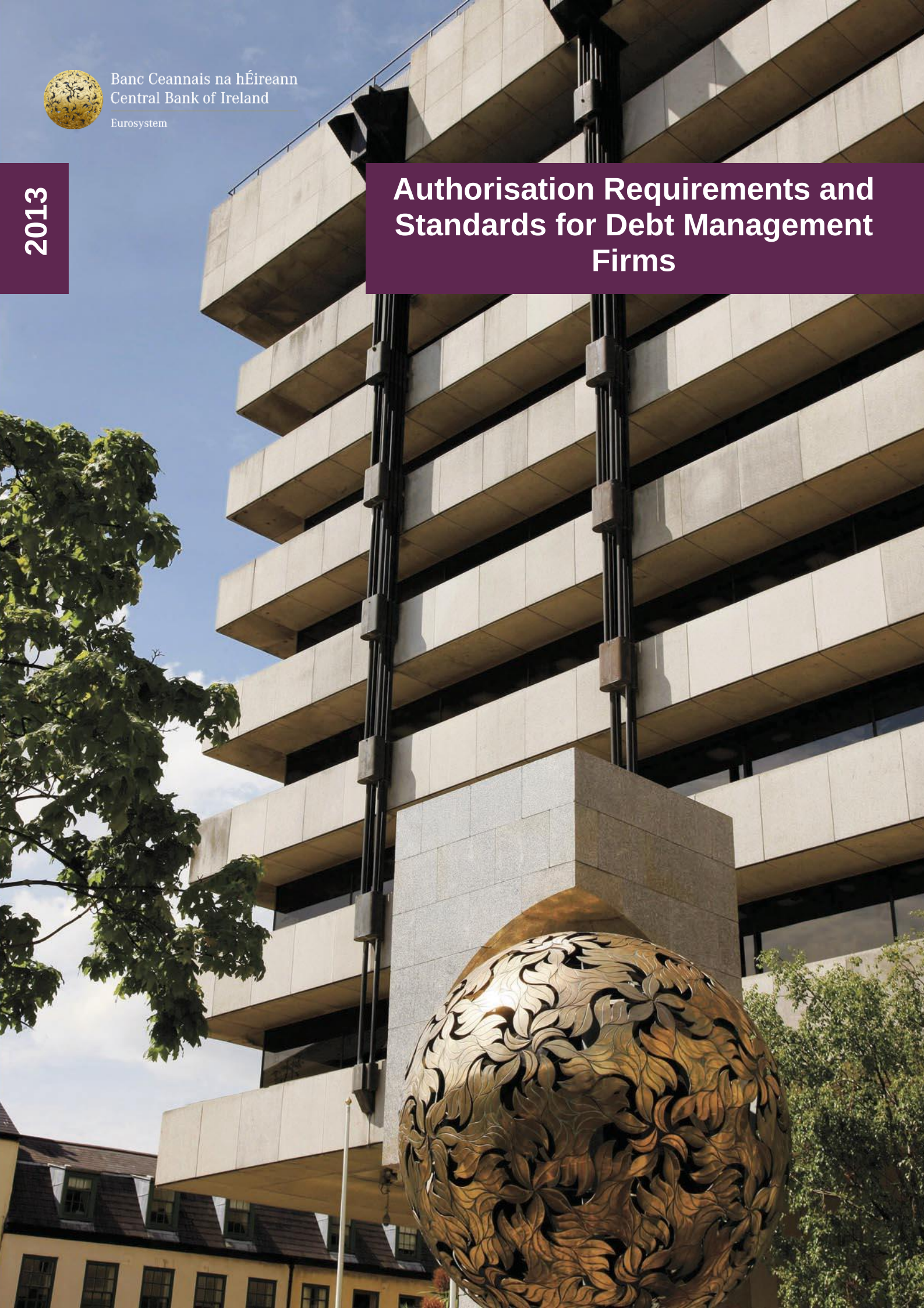


Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Authorisation Requirements and Standards for Debt Management Firms



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Debt Management Firms
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Part A: Authorisation Requirements

1. Introduction

- 1.1 The obligation to hold an authorisation applies to all persons who provide **debt management services** as defined in section 28 of the **Central Bank Act 1997** (as amended) (**'the Act'**).
- 1.2 Section 29 of **the Act** provides that it is a criminal offence to carry on **debt management services** 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, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that-
 - the body committed the offence without the person's knowledge, or
 - although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.
- 1.3 All **debt management services** provided by a **debt management firm** must be conducted within the State. If a **debt management firm** wishes to provide **debt management services** in another jurisdiction it must seek the appropriate authorisation from the relevant competent authority in that jurisdiction.
- 1.4 Part A of this document sets out:
 - the authorisation requirements that must be complied with by an applicant seeking authorisation to carry on **debt management services**; and
 - the on-going conditions that are imposed by the **Central Bank** when granting an authorisation to carry on **debt management services**.

Please note that each **debt management firm** should refer to the conditions of authorisation, which are annexed to its authorisation, for complete details of the conditions imposed on its authorisation.

- 1.5 Part B of this document lists certain other regulatory requirements which apply to **debt management firms** and which **debt management firms** should be aware of in relation to the provision of **debt management services**. This list is not exhaustive.
- 1.6 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.

1.7 **Legislative basis for the authorisation requirements and conditions imposed by the Central Bank and consequences of non-compliance:**

Section 30 of **the Act** provides that a person who wishes to carry on a regulated business can apply to the **Central Bank** for an authorisation to carry on such a business and the application must be in the form specified by the **Central Bank** and must contain such information and be accompanied by such documents as the **Central Bank** requests. Section 31 prescribes the grounds upon which the **Central Bank** can refuse an application for authorisation, including, that the applicant has failed to satisfy the **Central Bank** that the applicant is, or will be able, to properly fulfil the obligations imposed by or under Part V of **the Act** or any other designated enactment or designated statutory instruments. If the **Central Bank** grants an application for authorisation, it will impose certain of the requirements contained in Part A of this document as conditions pursuant to Section 33 and 33A of **the Act**. Under section 33A of **the Act**, the **Central Bank** may impose whatever conditions or requirements it considers appropriate relating to the proper and orderly regulation and supervision of persons carrying on debt management services and the protection of their **consumers** or potential **consumers**. 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**.

- 1.8 A contravention of any provision of **the Act** or of any condition or requirement imposed under a provision of **the Act** or of any provision of a designated enactment or designated statutory instrument is a prescribed contravention for the purposes of Part IIIC of the **Central Bank Act 1942** (as amended) and

accordingly the authorised **debt management firm** may be subject to the Administrative Sanctions Procedure of the **Central Bank** in the event of committing such a contravention.

- 1.9 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 holders of authorisations by Part V of **the Act**, the conditions of the authorisation and/or the requirements (if any) imposed by regulations in force under Part V. Section 36K provides that if a body corporate commits an offence under Part V of **the Act**, each person who was, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that-
- the body committed the offence without the person's knowledge, or
 - although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.
- 1.10 Pursuant to section 36A(1)(d) of **the Act**, the **Central Bank** may revoke an authorisation if it is 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** or any other designated enactment or designated statutory instrument, a condition of the authorisation or a requirement imposed by or under Part V of **the Act** or any other designated enactment or designated statutory instrument. See section 36A of **the Act** for a comprehensive list of the grounds upon which the **Central Bank** may revoke an authorisation.
- 1.11 Pursuant to Section 34 of **the Act**, the **Central Bank** may, from time to time, amend an authorisation granted to a person to carry out **debt management 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. Solvency

A debt management firm must at all times meet its financial obligations as they fall due. Furthermore, for regulatory reporting purposes, a debt management firm's balance sheet assets must at all times exceed its liabilities and goodwill and other intangible assets must be excluded in the calculation of balance sheet assets. Perpetual subordinated debt issued by the debt management firm in a form approved by the **Central Bank**, can be excluded from the calculation of balance sheet liabilities (five-year subordinated debt must be included in liabilities).

3. Professional Indemnity Insurance

- 3.1 Pursuant to section 33A(5) of the **Act**, a **debt management firm** shall have in place professional indemnity insurance ("PII"), against liability arising from professional negligence, covering the **debt management services** in accordance with paragraphs 3.2 below.
- 3.2 The amount insured shall at a minimum provide cover for €1.25 million per claim and €1.85 million in aggregate cover in a single policy period with regard to the services of the **debt management firm**.
- 3.3 The **debt management firm** shall provide the **Central Bank**, prior to commencing to carry on the practice of a **debt management firm**, and thereafter on an annual basis, with a written confirmation from the insurer that it has in place a policy of professional indemnity insurance which covers its activities as a **debt management firm** and meets the cover specified in paragraphs 3.2 above. Where the policy of professional indemnity insurance includes an excess amount payable by the **debt management firm**, the **debt management firm** shall be in a position to demonstrate to the **Central Bank** that he or she has the financial resources to pay this excess amount.

4 Organisation and Management

- 4.1 A **debt management firm** 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 business is managed in accordance with all relevant financial services legislation and regulatory requirements and in accordance with industry best practice.
- 4.2 A **debt management firm** must 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 their internal policies and legislative and other regulatory requirements; and
 - (e) sound administrative and accounting procedures.
- 4.3 A **debt management firm** 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 **debt management firm** must have adequate levels of staff and expertise to carry out its activities in the interests of its consumers and the proper and orderly regulation of the **debt management firm**.
- 4.5 A **debt management firm** must maintain sufficient compliance and internal audit arrangements to ensure that it complies with the relevant financial services legislation and regulatory requirements to which it is subject and to that end, it must ensure:

- (a) That it has compliance and audit staff with the necessary authority, resources, expertise and access to all relevant information, with regard to the firm's compliance, operational and financial risks;
- (b) That responsibility for compliance and audit activities are clearly assigned;
- (c) That the duties and responsibilities of those with responsibility for compliance and audit activities are clearly defined and documented;
- (d) That, where the nature, scale and complexity of the firm's activities are significant, the relevant persons with responsibility for compliance and audit activities are not involved in the performance of services or activities they monitor; and
- (e) That the proposed reporting lines/functional relationships between employees with compliance and audit responsibilities and the applicant's senior management and board of directors (including the frequency and format of reporting thereof) are clearly defined.

Compliance and audit activities may be outsourced to a suitably qualified third party. In the case of small scale entities (including single person entities), responsibility for compliance and audit obligations may be assigned to a single person, who may be involved in the performance of services or activities they monitor.

4.6 Without prejudice to the generality of the foregoing requirements of chapter 4, a **debt management firm** must do the following:

- (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 their 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 adequate technical, organisational and procedural safeguards.
- (d) Establish, implement and maintain systems and procedures that are adequate to safeguard the confidentiality, integrity and availability of information.
- (e) The **Central Bank** reserves the right to request an independent security system audit by an appropriate third party and the **debt management firm** shall provide a copy of a report prepared by the third party within the time limits provided for in the **Central Bank's** request.
- (f) A **debt management firm** must have effective business continuity and disaster recovery procedures in place.
- (g) The scope of the applicant's constituting documentation must be sufficiently wide to permit the **debt management firm** to conduct the proposed debt management services.

5 Relationship with the Central Bank

5.1 General

- 5.1.1 A **debt management firm** is required to obtain prior approval from the **Central Bank** in advance of engaging in any new activities or making any amendments to existing activities.
- 5.1.2 A **debt management firm** 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 these requirements or of any legislation applicable to the firm that may have occurred;
 - (b) the commencement of any legal proceedings by or against the **debt management firm**;
 - (c) any situations which have impacted or have the potential to impact significantly on the operation of the **debt management firm**.

5.1.3 The **debt management firm** must obtain the prior approval of the **Central Bank** in respect of any proposed change of legal or trading name.

5.1.4 In accordance with Section 36 of **the Act**, if a **debt management firm** decides to cease providing **debt management services** it must request, in writing, the revocation of its authorisation from the **Central Bank** without delay. 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 business.

5.2 Reporting

5.2.1 At the frequency specified to the **debt management firm** in the conditions of authorisation, a **debt management firm** must submit to the **Central Bank** a report setting out certain information. The details relating to the requirement to provide this report will be set out (with the conditions of authorisation) in the appendix to the notification of authorisation and may be varied from time to time at the **Central Bank's** discretion.

6. Ownership

6.1 The prior approval of the **Central Bank** must be sought in respect of any proposed material change of ownership of the **debt management firm** 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 capital held by a person or more than one person acting in concert reaches or exceeds 10%, 20%, 33% or 50% or would result in a **debt management firm** becoming a subsidiary of the acquirer.

6.2 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 **debt management firm**.

- 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 **debt management firm**, the ultimate beneficial ownership of shares so held must be identified to the **Central Bank**.
- 6.4 A **debt management firm** must notify the **Central Bank** where a direct or indirect disposal of shares occurs 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 **debt management firm** would cease to be a subsidiary of the disposer.
- 7. Outsourcing**
- 7.1 A **debt management firm** shall notify the **Central Bank** in advance where it proposes to outsource any **important operational function** relating to the provision of **debt management services**.
- 7.2 A **debt management firm** shall notify the **Central Bank** as soon as possible where a change occurs or is due to occur in an outsourcing arrangement governing an **important operational function** relating to the provision of **debt management services**.
- 7.3 Where a **debt management firm** 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 obligations of the debt management firm towards its consumers under Part V of the Act are complied with at all times;
 - (c) the outsourcing of operational functions will not be undertaken in such a way as to impair the quality of the **debt management firm's** internal controls and the ability of the competent authorities to monitor the **debt management firm's** compliance with all of its obligations.

- 7.4 Without prejudice to the generality of the foregoing, a **debt management firm** shall take the necessary steps to ensure that the following conditions are satisfied:
- (a) The service provider 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 if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (c) The **debt management firm** 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 service provider must disclose to the **debt management firm** 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 **debt management firm** must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to **consumers**;
 - (f) The service provider must, when required, cooperate with the **Central Bank** in connection with the outsourced activities;
 - (g) The **debt management firm**, 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 service provider; The service provider must protect any confidential information relating to the **debt management firm** or its **consumers**;
 - (h) The **debt management firm** and the service provider 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.

- (i) The respective rights and obligations of the **debt management firm** and of the service provider shall be clearly allocated and set out in a written agreement.
- (j) A **debt management firm** 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** assess compliance with the firm's obligations under Part V of **the Act**, any other designated enactment or designated statutory instrument and any conditions of authorisation imposed on the **debt management firm**.

7.5 Where a service provider, acting on behalf of a **debt management firm** engages directly with a **consumer**, the **debt management firm** must inform the **consumer** that the particular function has been outsourced to the service provider.

8. Other Places of Business

- 8.1 A **debt management firm** must receive the prior approval of the **Central Bank** before operating from a place of business other than its head office. Such **other place of business** may be located within the State only.
- 8.2 A **debt management firm** 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 **debt management firm** must notify the **Central Bank**, at least 14 days in advance, of the proposed closure of **another 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 **debt management firm** to keep appropriate records regarding its regulated business. Such records include but are not limited to:
 - (a) Identification of its consumers;

- (b) Communications with its consumers;
- (c) Consumer files, including records of negotiations with creditors copies of correspondence to and from consumers and, advice to consumers;
- (d) Debt management plans;
- (e) Creditor lists;
- (f) All records or evidence required to be retained under any Regulations for **debt management firms** made by the **Central Bank**
- (g) Board Minutes;
- (h) Financial Audit Reports;
- (i) Internal Audit Reports;
- (j) Compliance Reports; and
- (k) Complaints handling records.

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

- (i) in the case of (a) to (f), the date on which the **debt management firm** ceases to provide a **debt management service** to the **consumer** or the date of the last interaction with the **consumer**, whichever is the later.
- (ii) In the case of (g), the date of the Board meeting.
- (iii) in the case of (h) to (j), the date of the relevant report.
- (iv) in the case of (k), the date of the closing of the complaint.

All records of the **debt management firm** must be kept in the State and pursuant to section 36F(1)(b) the **debt management firm** 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

10.1 **Other place of business** means a place of business other than the head office which is a part of a **debt management firm**, which has no separate legal personality and which carries out directly some or all of the services inherent in the business of a **debt management firm**.

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

- 10.3 **Consumer**, for the purposes of **Part V** means (a) an individual acting otherwise than in the course of business, or (b) a micro enterprise within the meaning given by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
- 10.4 **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.
- 10.5 **Debt Management Firm** means a person who for remuneration provides **debt management services** to one or more **consumers**, other than an excepted person;
- 10.6 **Debt Management Services** means—
- (a) giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts,
 - (b) negotiating with a person's creditors for the discharge of the person's debts (in whole or in part), or
 - (c) any similar activity associated with the discharge of debts;
- 10.7 **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 **debt management firm** concerned with the requirements of its authorisation or its other obligations,
 - (b) its financial performance, or
 - (c) the soundness or continuity of its **debt management services**.

Part B: Additional Regulatory Requirements

This Part lists certain other legal and regulatory requirements of which the **debt management firm** should be aware in relation to the provision of debt management 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.

It should be noted that breaches of these requirements may amount to prescribed contraventions for the purposes of Part IIIC of the **Central Bank Act 1942** (as amended) and/or to criminal offences under the relevant legislation and accordingly can attract the sanctions provided for in Part IIIC of the **Central Bank Act 1942** (as amended) and/or under the relevant legislation. Furthermore, a contravention of these requirements may be grounds for the revocation of the **debt management firm's** authorisation pursuant to Section 36A of **the Act**.

11. Additional Legal and Regulatory Requirements

11.1 Consumer Protection Code 2012

The provisions of the Consumer Protection Code 2012 apply to authorised **debt management firms**.

11.2 Minimum Competency Code 2011

Debt management firms must consider whether individuals employed or acting on its behalf are engaged in any activities which fall within the scope of the Minimum Competency Code 2011.

11.3 Central Bank Act 1942

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

11.4 Fitness & Probity

Persons exercising pre-approval controlled functions and controlled functions in **debt management firms** 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 **debt management firm** can appoint a person to a pre-approval controlled function, the **Central Bank** must have approved the appointment in writing. **Debt management firms** 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.

11.5 Obligations of the auditor of a regulated financial service provider to provide a report to the Central Bank in certain circumstances:

Debt management firms should note that Part IV of **the Act** imposes obligations on the auditor of a **debt management firm**.

T +353 1 224 4386 F +353 1 224 4572 www.centralbank.ie debtmanagementservices@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland