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Irish FinTech Regulation Focus

SIX KEY AREAS



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Irish FinTech Regulation Focus

The Central Bank of Ireland ("**Central Bank**") regulates the provision of certain FinTech products and services by e-money and payment institutions ("**Firms**") in Ireland.

As FinTech comes under increased regulatory scrutiny, the Central Bank recently highlighted the following six key areas for the sector:



SAFEGUARDING



OUTSOURCING AND
OPERATIONAL
RESILIENCE



CULTURE / FITNESS
AND PROBITY



BUSINESS AND
OWNERSHIP
CHANGE
NOTIFICATIONS



AML AND
SANCTIONS



CRYPTO
REGULATION

In the table below, the key supervisory expectations and their potential impact for Firms are considered.

Area of Focus	Supervisory Expectation
 <p data-bbox="225 779 443 813">SAFEGUARDING</p>	<p data-bbox="549 477 1286 584">Following industry-wide inspections, the Central Bank reiterated safeguarding as a supervisory priority in its Dear CEO Letter¹ issued to Firms on 9 December 2021.</p> <p data-bbox="549 624 1374 958">The Central Bank expects Firms to assess their compliance with their safeguarding obligations under the European Union (Payment Services) Regulations 2018 ("PSR") and the European Communities (Electronic Money) Regulations 2011 ("EMR") and to have robust, board-approved, safeguarding risk frameworks in place, which ensure that relevant client funds are appropriately identified, managed and protected daily (including the clear segregation, designation and reconciliation of user balances).</p> <p data-bbox="549 999 1353 1106">Firms were required to submit attestations to the Central Bank at the end of March 2022, disclosing any gaps in their safeguarding frameworks.</p>
 <p data-bbox="213 1682 467 1771">OUTSOURCING AND OPERATIONAL RESILIENCE</p>	<p data-bbox="549 1267 1370 1525">On 17 December 2021, the Central Bank issued its Cross-Industry Guidance Paper on Outsourcing. This guidance is relevant to all regulated firms which use outsourcing as part of their business model and is applicable proportionately, based on the nature, scale and complexity of each firm's business model and degree to which it engages in outsourcing.</p> <p data-bbox="549 1565 1326 1637">It complements existing EBA Guidelines on Outsourcing Arrangements and PSR / EMR outsourcing requirements.</p> <p data-bbox="549 1677 1361 1856">Firms need to conduct a gap analysis and update contracts and internal governance frameworks to address any gaps. For further details, please see our update CP138: Central Bank of Ireland Publishes Cross-Industry Outsourcing Guidance².</p> <p data-bbox="549 1897 1370 1968">On 1 December 2021, the Central Bank issued its Operational Resilience Guidance Paper.</p>

¹ <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/payment-institutions/supervisory-expectations-for-payment-and-e-money-firms.pdf?sfvrsn=4>

² <https://maples.com/en/knowledge-centre/2021/12/central-bank-of-ireland-publishes-cross-industry-outsourcing-guidance>

Area of Focus

Supervisory Expectation

Consistent with the Central Bank's strategic commitment of strengthening resilience throughout the financial system, the Operational Resilience Guidance's objective is to communicate how Firms should prepare for, respond to, and recover and learn from an operational disruption that affects the delivery of critical or important business services.

The guidance is not prescriptive and is designed to be flexible and applicable proportionately based on the nature, scale and complexity of each Firm's business.

For further details, please see our update [CP140: Central Bank of Ireland Publishes Operational Resilience Guidance](#)³.

In its Consumer Protection Outlook Report 2021, the Central Bank indicated its expectation for Firms to review the risks to consumers of financial services and take concrete action to deliver on these expectations where appropriate.

Firms are required to embed a consumer-focused culture supported by internal systems and controls, including appropriate and well-developed risk management frameworks. For further details, please see our update [Further Focus on the Central Bank of Ireland's 2022 Priorities](#)⁴.



CULTURE / FITNESS AND PROBITY

New legislation is to be introduced shortly to formalise an Individual Accountability Framework ("**IAF**") and a new Senior Executive Accountability Regime ("**SEAR**") although it is not initially anticipated that payment and e-money firms will be in scope for Phase 1 of this new regime.

New fitness and probity regulations came into force in April 2022 and introduce new categories of pre-approval control functions ("**PCFs**") under the Central Bank's fitness and probity regime.

Non-executive directors (formerly PCF-2) are identified under separate PCF designations, depending on whether they are independent (PCF-2B) or non-independent (PCF-2A). The role of Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing

³ <https://maples.com/en/knowledge-centre/2021/12/central-bank-of-ireland-publishes-operational-resilience-guidance>

⁴ <https://thoughts.maples.com/post/102hkok/further-focus-on-the-central-bank-of-irelands-2022-priorities>

Area of Focus

Supervisory Expectation

Financing Legislation (PCF-15) has fallen away and in addition to the existing Head of Compliance (PCF-12), a new Head of Anti-Money Laundering and Counter Terrorist Financing (PCF-52) has been introduced as a standalone PCF role. Firms should consider the impact of the changes on their existing PCF role holders.

For further details, please see our update [Updated Central Bank of Ireland PCF List – Required Actions and Filings](#)⁵.



CHANGE NOTIFICATIONS

Firms should be mindful of the Central Bank's [requirements](#)⁶ on certain changes to their business which may trigger a notification to it or an application seeking its approval, at the earliest possible opportunity. For example, where the Firm expects to make a material change to its business model including: (i) where it makes a substantive change to its service or product offering or materially changing the way in which its service / product offerings are provided; or (ii) its business projections are forecast to be significantly in excess of those in its authorisation process.

Any new outsourcing arrangements for critical or important functions, or material changes to existing arrangements, must also be notified in advance.

Change of control notifications must also be filed in advance.



ANTI-MONEY LAUNDERING ("AML") AND COUNTERING THE FINANCING OF TERRORISM ("CFT") GUIDELINES FOR THE FINANCIAL SECTOR AND SANCTIONS

In line with the [Central Bank's AML and CFT Guidelines for the Financial Sector](#)⁷, Firms must ensure they have a robust AML / CFT compliance framework, based on the Firm's risk assessment (that is specifically focused on the money laundering and terrorist financing risk arising from the relevant Firm's business model). For further details, please see our update [Central Bank of Ireland issues Revised AML and CFT Guidelines: Key Changes](#)⁸.

In light of the situation in Ukraine and the introduction of new EU and international restrictive measures, Firms should ensure that they have appropriate processes to ensure adherence with the applicable sanctions.

⁵ <https://maples.com/en/knowledge-centre/2022/4/updated-central-bank-of-ireland-pcf-list---required-actions-and-filings>

⁶ <https://www.centralbank.ie/regulation/industry-market-sectors/electronic-money-institutions/amendments-processing>

⁷ <https://www.centralbank.ie/docs/default-source/regulation/amld-/guidance/anti-money-laundering-and-countering-the-financing-of-terrorism-guidelines-for-the-financial-sector.pdf?sfvrsn=9>

⁸ <https://maples.com/en/knowledge-centre/2021/7/central-bank-of-ireland-issues-aml-guidelines>

Area of Focus

Supervisory Expectation



CRYPTO REGULATION

On 23 March 2022, the European Parliament published the report adopted by its Economic and Monetary Affairs Committee on the European Commission's legislative proposal for a Regulation on markets in crypto assets ("**MiCA**").

MiCA proposes a comprehensive EU-wide framework for the regulation and supervision of issuers and providers of crypto asset services, with a view to protecting investors and the integrity and stability of the financial system. If introduced, this regime would establish an EU-wide framework, similar to the current MiFID framework, for crypto assets which are not financial instruments, provide for investor protection, conduct, safeguarding and prudential requirements for in-scope providers, and a passporting regime to facilitate pan-European access and consistency in how these assets and providers are regulated.

The Fifth Money Laundering Directive EU/2018/843 brought previously unregulated crypto assets within its scope and since April 2021, virtual asset service providers ("**VASPs**") are subject to fitness and probity and AML and CFT requirements under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

For further details, please see our update [Introducing the Irish AML Regime for Crypto Providers](https://maples.com/en/knowledge-centre/2021/4/introducing-the-irish-aml-regime-for-crypto-providers)⁹.

⁹ <https://maples.com/en/knowledge-centre/2021/4/introducing-the-irish-aml-regime-for-crypto-providers>

How We Can Help

With a depth of experience, our dedicated Financial Services Regulatory team supports clients across all regulated sectors in managing regulatory change, drafting policies, procedures and customer documentation, negotiating outsourcing arrangements, assessing corporate governance structures and guiding clients through engagements with the Central Bank on authorisation applications to supervisory and PRISM engagements (including interview preparation) and the administrative sanctions procedure.

Further Information

Further information on our Irish Financial Services Regulatory Group and the services we provide is available on our [website](#)¹⁰ and in our [FSR](#)¹¹ and [FinTech](#)¹² brochures. If you would like further information, please liaise with your usual Maples Group contact or the persons below.

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¹⁰ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

¹¹ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

¹² <https://maples.com/-/media/files/pdfs/general/fintech---june-2021.pdf>



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