

Briefing
July 2017

Brexit: Central Bank FAQ

The Central Bank has published a [Brexit FAQ](#) which it plans to update as Brexit negotiations progress.

The FAQ consolidates the position statements already made by the Central Bank since the Brexit referendum, and reiterates that the Central Bank will deal with all relocation-related enquiries in an “*open, engaged and constructive manner*”, taking “*an outcomes-focused, risk-based approach*”.

The Central Bank again emphasises its support for the policy positions taken by the European Supervisory Authorities and Single Supervisory Mechanism, making particular reference to the [FAQ](#) published by the European Central Bank (ECB) regarding its expectations for banks relocating to the Eurozone, and the recent ESMA [Opinion setting out general principles to support supervisory convergence](#). For more information on that ESMA Opinion, please read our recent Client Briefing: [Brexit: ESMA highlights importance of supervisory convergence](#).

In addition to providing details for relocating firms that may be looking to relocate to Ireland in relation to exploratory pre-application phase, and the submission phase, of the Central Bank’s application process, other specific points were highlighted by the Central Bank.

SUBSTANTIVE PRESENCE

The Central Bank has again reiterated the importance of firms having a substantive presence in Ireland. Firms based in Ireland should not be run from elsewhere, and decision-making must take place within Irish firms. Those firms must also be adequately resourced and able to manage key risks locally.

OUTSOURCING

While acknowledging that outsourcing is component part of most businesses, and can promote efficiencies, the Central Bank has again cautioned that outsourcing can present considerable risks if not appropriately controlled.

As such, the Central Bank will not permit firms to outsource where it would leave the Irish entity as an “*empty shell*” and the Central Bank will

need to be satisfied that there are robust frameworks in place to monitor and control any outsourcing arrangements.

PRE-APPROVAL CONTROLLED FUNCTIONS (PCFs) AND “DUAL-HATTING”

While the Central Bank expects that all those that perform PCF functions will dedicate sufficient time to those roles, it may allow key employees to be “*dual-hatted*” before an Irish regulated entity begins operations.

The Central Bank will, however, want to review (and be satisfied with) the relevant firm’s proposals around allocation of time by dual-hatted PCFs, conflict management, resource allocation and the removal of dual-hatting as the Irish business grows.

BACK-TO-BACK BOOKING

In line with the ECB’s concerns around the use of back-to-back booking, the Central Bank will expect to see (from any applicants who propose to use back-to-back booking) a clear rationale for that proposal. The Central Bank will also carry out a detailed assessment of any proposed booking model with

particular reference to resolution concerns – applicants will need to demonstrate an ability to manage risks that may crystallise in a crisis situation. Once any authorisation-related transitional period has ended, the Central Bank will expect to see firms start to manage key risks locally in line with the Central Bank’s requirements around substantive presence.

UK-APPROVED INTERNAL MODELS

If a firm’s internal models have been approved already by the UK regulatory authority, and given the length of time that it can take to carry out a full assessment of a firm’s internal models, the Central Bank will take a “*pragmatic approach*” to allowing those firms continue to use those UK-approved models for a limited period of time subject to certain conditions - the UK regulator must have approved the model and the firm must have applied to the Central Bank for approval of the model. The Central Bank is prepared to frontload certain checks as part of its model-review process, and if deficiencies are identified, it will expect appropriate measures to be taken to resolve these.

If you would like to discuss the above in further detail, please contact any member of our team or your usual Arthur Cox contact.



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