

Central Bank outlines expectations of investment firms' preparations for new prudential regime

The Central Bank of Ireland (CBI) has published [Consultation Paper CP135](#), “[Consultation on Competent Authority Discretions in the Investment Firms Directive and the Investment Firms Regulation](#)” (the **Consultation Paper**).

The Consultation Paper sets out CBI proposals on the specific discretions available to national competent authorities set out in the [Investment Firms Directive and Investment Firms Regulation](#), the new prudential regime for MiFID investment firms which is due to be implemented in June 2021. Interested stakeholders have until 26 March 2021 to submit a response.

The Consultation Paper does not cover all competent authority discretions under IFD / IFR. It does not include remuneration-related discretions which was dealt with in a [separate consultation by the Department of Finance](#).

Overview

IFD and IFR were introduced to provide a separate proportionate prudential regime for investment firms, better calibrated to their level of risk, while ensuring only the largest and systemically important investment firms remain subject to CRD IV and CRR requirements.

The Consultation Paper is divided into five sections, the first four of which set out the CBI's proposed approach to the key competent authority discretions:

1. Application of the CRD regime to investment firms
2. Liquidity requirements
3. Assessment of internal capital and liquid assets
4. K-factor adjustment
5. Amendments to the CBI's Investment Firms Regulations

Overall, the CBI is proposing a case-by-case approach to the exercise of nearly all these discretions. The only exception is the CBI's proposal to require all Class 3 firms to perform an assessment of internal capital and liquid assets.

Implementation of the discretions will be subject to binding technical standards developed by the EBA and ESMA, which will further specify the relevant IFD/IFR requirements.

Section I: Application of the CRD regime to investment firms

The CBI is proposing to take a **case-by-case approach** to exercising its discretion to:

- Apply more onerous CRR requirements to those investment firms with consolidated assets of between €5bn and €15bn who conduct investment bank type activities where such application is justified in light of the size, nature, scale and complexity of the relevant firm's activities. The CBI exercising this discretion would result in affected investment firms who would ordinarily be treated as Class 2 investment firms being treated in the same way as Class 1 minus firms.

- » It is unclear whether the CBI has reached out to all Irish investment firms who could be subject to such a direction. However, potentially affected investment firms should consider whether consultation with the CBI now is necessary as part of their IFD/IFR plans, especially if their current plans are based around a Class 2 base line scenario.
- Allow an investment firm that would otherwise be subject to IFD / IFR on an individual basis and is included in consolidated supervision under CRR to continue to apply the prudential requirements of CRR, upon notification to the CBI and subject to the CBI being satisfied with various considerations.
 - » In-scope banking groups therefore should consider engaging with the CBI on this point if they wish to avoid having a relevant Irish investment firm subsidiary comply with the IFD/IFR on a solo basis.

Section II: Liquidity requirements

The CBI is also proposing to take a **case-by-case approach** to exercising its discretion to:

- Exempt investment firms subject to consolidated supervision from the application of solo liquidity requirements, where the CBI is satisfied that certain conditions in relation to group liquidity arrangements have been met. The implemented proposal would mean that **solo** liquidity waivers will not be granted automatically to investment firms who are part of banking or investment groups. They will need to take some steps to apply for that specific waiver.
- Exempt Class 3 investment firms from the requirement to hold at least one third of their fixed overhead requirement in liquid assets. As the CBI does **not** consider the IFR liquidity requirements to be overly burdensome, it is proposing not to exercise this discretion on a general basis, but only in **exceptional circumstances**. Currently, relatively few smaller MiFID investment firms are subject to CRR liquidity requirements. In the absence of exemption, Irish Class 3 MiFID investment firms will be subject to a new liquidity regime which they will need to plan for.
- Exempt EU parent investment firms, EU parent investment holding companies and

EU parent mixed financial holding companies from the application of consolidated liquidity requirements. Again, these exemptions will not be automatically granted and will need to be applied for.

Section III: Assessment of internal capital and liquid assets

The CBI is proposing **not** to exercise the available discretion to exempt Class 3 investment firms from the requirement to perform an assessment of internal capital and liquid assets to ensure that they have adequate capital to cover liquidity risks. This is consistent with the CBI's approach of ensuring that all Irish MiFID firms are subject to some level of liquidity requirements. The CBI notes that it considers it good practice to require all investment firms to review their own risks and ensure they have adequate capital and liquidity, regardless of firm size.

Section IV: K-factor adjustment

The CBI is proposing to take a case-by-case approach to exercising its discretion to replace missing historical data points in relation to a specific K-factor component, where a material change in the firm's business model means that full data to support the calculation of a K-factor own fund requirement is not available. The CBI notes that these discretions are of a technical nature and allow for the smooth implementation of the IFD / IFR regime.

Section V: Amendments to the Central Bank Investment Firms Regulations

The CBI is proposing to amend Regulation 8 and the associated Annex of the Central Bank Investment Firms Regulations in order to align reporting requirements with the new classification of investment firms under IFD / IFR.

Next steps

Following consideration of the feedback received, the CBI intends to issue a Regulatory Notice on the implementation of discretions under IFD/IFR by the end of June 2021.

The Consultation Paper also notes that the CBI intends to hold a separate consultation process this year on changes to the national competent

authority discretions and options as a result of CRDV and CRR2. That consultation process will be relevant to firms that will/may be considered Class 1 and Class 1 minus investment firms. Following the consultation period, the CBI intends to publish an updated implementation regulatory document for CRD IV/CRR which will not be relevant for Class 2 and Class 3 investment firms.

Regulatory expectations

While IFD/IFR are applicable from 26 June 2021, the Consultation Paper notes the CBI's expectation that all firms will have already begun considering the impact of IFD/IFR and commenced preparations to ensure that they will be in a position to comply with the new regime

from that date. The Consultation Paper notes that the CBI expects investment firms to adhere to EBA and ESMA outputs where applicable and urges firms to carefully consider any regulations and guidance issued to date or as it emerges.

Our dedicated [IFD/IFR webpage](#) hosts additional information and guidance on the implementation of the new prudential framework for investment firms.

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