

# Authorisation as a MiFID investment firm in Ireland

June 2024

- MiFID investment firms are regulated financial service providers authorised to provide investment services in relation to financial instruments.
- An application for authorisation as a MiFID investment firm is submitted to the Central Bank of Ireland (**Central Bank**) under the European Union (Markets in Financial Instruments) Regulations 2017 which transposed the MiFID II Directive into Irish law.
- There is a separate, simpler application form and process for data reporting service providers.

## PROCESS AND TIMELINES

Stage	Timeline
Preliminary meeting pre-application presentation	The applicant firm should request a preliminary meeting with the Central Bank to discuss its proposed application. Applicant firms must submit to the Central Bank a presentation (in slide-deck format) at least 15 working days in advance of the preliminary meeting. The presentation (not exceeding 30 slides) should contain an overview of the applicant firm's proposals, including ownership structure, business model, regulatory permissions sought, key products/ services, target client type, governance, risk management and resourcing arrangements and background/context on the wider group (where applicable). The presentation should demonstrate how the applicant firm's business will operate in the first three years post-authorisation. The applicant firm is required to provide a list of attendees, which should include key persons/principals of the firms.

	<p>Legal advisors may attend the preliminary meeting. The Central Bank expects applicant firms to seek the professional advice of subject matter experts, where appropriate, prior to putting forward queries in the preliminary meeting</p>
Preliminary meeting	<p>A preliminary meeting will be held with all applicant firms in advance of a formal application being made to the Central Bank. The purpose of the preliminary meeting is (i) for the applicant firm to provide the Central Bank with a high-level overview of its proposals and (ii) for the Central Bank to outline its authorisation expectations and provide an indicative timeline for the authorisation process.</p>
Key Facts Document ( <b>KFD</b> )	<p>After the preliminary meeting, the applicant firm will be invited to submit a KFD containing further details of the applicant firm's proposed business and operational model and associated risks, including details on the firm's background, ownership, number and type of clients, capital projections, governance and staff resourcing arrangements and outsourcing arrangements.</p> <p>The KFD is submitted to the Central Bank following a required structure and format. The information included in the KFD will be more granular in nature than the level of information submitted in the preliminary meeting pre-application presentation. The contents of the KFD should include (i) introduction and the purpose, scope and rationale for the application; (ii) brief background of the applicant firm and the reason(s) why the applicant firm has selected Ireland as a location from which to carry out investment services and apply for MiFID II authorisation; (iii) business model; (iv) client assets; (v) target clients (vi) governance and staff resourcing arrangements (vii) high-level capital projections for the first three years of operation post-authorisation; (viii) requests for permission, derogation or use of a waiver under relevant legislation (ix) application submission timeline.</p>

Central Bank issues written comments on KFD	The Central Bank will revert to the applicant firm in writing with any comments on the KFD. Once the KFD has been updated to address the Central Bank's comments, the applicant firm will be invited to submit a formal application. Where an applicant firm's proposed business model is of sufficient nature, scale and complexity, the Central Bank may request submission of a "draft formal application" before moving to the formal application stage.
Submission of formal application to the Central Bank	<p>Formal application includes completion of the application form and submission of a detailed programme of operations for the firm amongst other documents.</p> <p>The Central Bank will either:</p> <ul style="list-style-type: none"> <li>› Acknowledge receipt of a "complete" application; or</li> <li>› Return an incomplete application and set out why it has been deemed incomplete.</li> </ul>
Review of the application by the Central Bank	The Central Bank will engage with the applicant firm to set the expected timeframe by which initial and subsequent comments will be issued and the corresponding timelines for the applicant firm's responses.
Decision on the application	A determination will generally be made on the application within 6 months of receipt of a complete application. In practice, the timeline for completing the review and authorisation decision will depend on factors such as the nature, scale, and complexity of the business, the quality of submissions and materials, and responses to the Central Bank's questions.

- The above timelines may be stopped and no longer apply if there are any material changes to the applicant's programme of operations during the review process, any changes to the shareholder's structure during the review process, or if the applicant fails to respond to comments within the required timeframes set out above.
- The Central Bank does not charge any fee for assessing applications for authorisation as a MiFID investment firm.

## MAIN FEATURES OF THE APPLICATION

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- Fully completed and signed application form.
- Programme of Operations document including:
  - › Business strategy, business model and MiFID investment services to be provided.
  - › High-level overview of any non-MiFID/ non-Investment Intermediaries Act activity, including unregulated activity, to be carried out.
  - › Organisational structure chart including staff numbers, their time commitments, roles,
  - › responsibilities, location and reporting lines and details of Pre-Approval Controlled Function role-holders (**PCFs**) and their experience.
  - › Corporate governance arrangements including directors and committees.
- Fully completed online individual questionnaires for all PCFs, including directors.
- Shareholder information including group structure and required supporting documentation.
- Financial projections for the first three years of operations (including P&L and Balance Sheet; audited accounts and latest management accounts (where applicable); and regulatory capital calculations).
- Details of any charges, guarantees, indemnities or other security to third parties.
- Required client asset documentation (if applicable).
- Arrangements for both the orderly and forced winding down of the firm ensuring protection of client assets and fair treatment of clients (including, where applicable, the Internal Capital Adequacy Assessment Process (**ICAAP**) for Class 1 minus and Class 2 applicant firms).
- The Central Bank may request the applicant to provide all/any mandatory policies and procedures for a MiFID investment firm during the application process.

## KEY ISSUES FOR THE APPLICANTS

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### 1 SUBSTANCE IN IRELAND

“Mind and management” must be based in Ireland including board meetings and heads of certain senior management functions (finance, legal, compliance, risk) located in Ireland.

### 2 OUTSOURCING

Firms must demonstrate adequate supervision and oversight of outsourced functions through comprehensive outsourcing agreements which are compliant with regulatory requirements.

### 3 CALCULATION OF CAPITAL REQUIREMENTS/OWN FUNDS

The Programme of Operations must include a detailed explanation, along with appropriate legislative references, as to whether the applicant firm is within the scope of the Capital Requirements Directive and the Capital Requirements Regulation or the Investment Firms Directive (**IFD**) and Investment Firms Regulation (**IFR**). Applicants should first determine their Initial Capital Requirement (**Permanent Minimum Capital Requirement**) with reference to the services to be provided and then their categorisation under the IFR-IFD, where applicable, which requires the applicant firm to apply a number of metrics to their capital forecasts.

### 4 COMPLIANCE WITH CLIENT ASSET RULES (WHERE APPLICABLE)

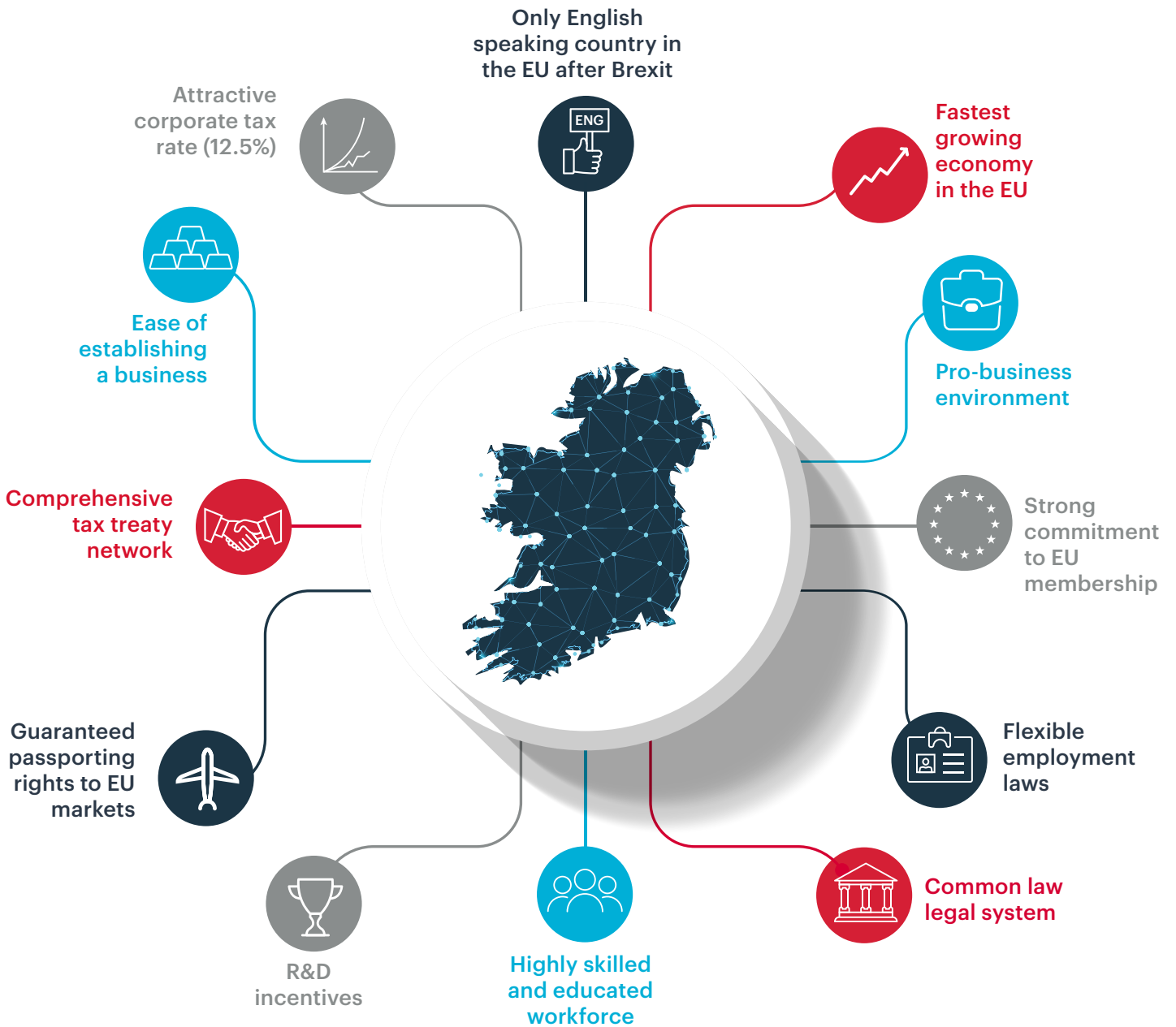
The Central Bank will require applicant firms that propose holding client assets to set out clearly to the Central Bank the arrangements the firm will have in place to manage client assets in accordance with Central Bank Regulations.

## HOW CAN WILLIAM FRY ASSIST YOU?

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William Fry’s Asset Management & Financial Regulation Department has vast experience of working with applicants’ in-house teams to navigate the authorisation process efficiently and cost-effectively. We can advise you on all aspects of your MIFID investment firm authorisation in Ireland. For more information, please contact Shane Kelleher, John Aherne, Patricia Taylor or any member of WilliamFry’s Asset Management & Financial Regulation Department for legal advice.

## WHY ARE FIRMS CHOOSING IRELAND?



## CONTACT US

For more information, please contact Shane Kelleher, John Aherne, Patricia Taylor or your usual William Fry contact.



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