



FINANCIAL SERVICES

Small Payment Institutions and Ireland

by

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With the UK looking increasingly likely to exit both the single market and the customs union upon its withdrawal from the EU, Ireland would appear well-positioned to become the EU jurisdiction of choice for payment services firms. Some of the obvious benefits of locating in Ireland include the stable political climate, the favourable tax regime, unrestricted access to 500 million consumers throughout the EEA and Ireland's reputation as a burgeoning FinTech hub with an English-speaking workforce and an array of specialist service providers.

The Central Bank of Ireland is responsible for the authorisation and supervision of Irish payment services firms and is now considering applications for authorisation under the new, second Payment Services Directive (PSD 2) which entered into force on 13 January 2018. PSD 2 was transposed into Irish law on 12 January 2018 by the European Union (Payment Services) Regulations 2018 (the 2018 Regulations). The 2018 Regulations contain no significant gold-plating of PSD 2 requirements.

PSD 2 broadens the regulatory requirements applicable to the sector and brings within its scope certain market operators that were not previously subject to regulation under the first Payment Services Directive (PSD 1). To this end, the Central Bank has published new application forms and has also committed to assessing applications for authorisation within ninety working days. These are all welcome developments.

Technological innovation in the financial services space continued apace in 2017. Disruptive technologies are having a lasting impact on the financial services industry, including the payment services area. A key consideration for innovators in the payment services space is how financial services regulation will affect their ability to get to market. A full scope PSD licence is onerous for firms in start-up mode and requires time and money.

PSD 2 provides individual EU Member States with a discretion to grant a waiver of the application of certain payment institution authorisation procedures to small institutions. The rationale for this discretionary waiver is that it gives smaller firms an opportunity to get a foothold on the regulatory ladder, while also affording space and time to grow to such firms. The Irish government has given the Central Bank the option to implement a small payment institution regime in Ireland under the 2018 Regulations. The Central Bank chose not to exercise a similar option under the PSD 1 regime and our understanding is that the status quo is likely to be maintained under PSD 2.

In the past the UK Financial Conduct Authority (the FCA) has been praised for being pragmatic and consistent in its approach to vetting and authorising payment services firms. This has been a good public relations exercise for the FCA and the UK in terms of attracting payment services firms. The UK owes some of its success in this area to a specifically tailored start up regime which places less onerous regulatory requirements on early-stage companies operating in the payments services arena. Whilst these start-ups are unable to avail of passporting rights, this lighter-touch approach

has effectively provided an incubator and a platform from which to grow indigenous UK payment services companies. This has helped to cement the industry perception of the UK as a premier destination for payment services firms.

Speaking at a Conference on 10 November 2017, Taoiseach Leo Varadkar emphasised Ireland's commitment to being an early-adopter of new technologies and expressed his intention to make Dublin the "tech capital of Europe". The Irish FinTech industry seems likely to be at the heart of this strategy given that Ireland is already regarded as a hub for FinTech research and innovation. The IFS 2020 Action Plan is further evidence of the Irish government putting the best foot forward in seeking to attract FinTech firms to set up operations in Ireland.

At the time of publication there are thirteen payment services firms authorised in Ireland. While the UK is a much bigger commercial centre, it has disproportionately more payment services firms listed on its register of authorised firms. At least some of the reason for this can be attributed to the way the UK deals with smaller firms. When small firms grow and become successful, they are more likely to continue to operate and seek full scope licenses in the jurisdictions in which they commenced operations.

The Central Bank has been clear that its mandate and mission is to protect consumers and to safeguard financial stability. In that regard it has been made clear that, in the context of Brexit, there will be no relaxation of the rules that apply in connection with obtaining and maintaining a regulatory authorisation in Ireland, in any sector. This position makes sense. Indeed, one factor in Ireland's emergence as a destination for international regulated financial services firms has been the strong and pragmatic nature of the regulatory environment that is facilitated by the Central Bank of Ireland.

However, the apparent continued refusal of the Central Bank to exercise the option afforded to it in relation to the implementation of a small payment institutions regime is a different matter. Such a regime would not be at odds with the Central Bank's mission but would instead complement it by ensuring that early stage companies think about and implement regulatory compliance into their infrastructures at the earliest stage possible.

A small payment institution regime would be a very helpful way of making Ireland a jurisdiction in which entrepreneurs in the payment services sector could find their feet and develop sustainable companies. Successful start-ups would no doubt create employment along the way and further enhance Ireland's reputation as a place to do business.

If you would like to know more about our services or have any queries on the matters discussed above, please get in touch with any of the contacts listed or your usual contact at LK Shields.

For more information on Ireland as a business location please download our guide [here](#).

About the Author