



STATUTORY INSTRUMENTS.

S.I. No. 391 of 2017



CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) MINIMUM COMPETENCY REGULATIONS 2017

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CERTIFICATE OF COMPETENCY

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) MINIMUM COMPETENCY REGULATIONS 2017

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (No.26 of 2013) (the “Act”), the Bank, having consulted with the Minister for Finance in accordance with section 49(1) of the Act, hereby makes the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017.

(2) These Regulations come into operation on 3 January 2018.

Interpretation

2. In these Regulations—

“accredited person” means a person who satisfies the standards set out in Part 1 of the Minimum Competency Code;

“advice” means the provision of a personal recommendation to a person, whether at the person’s request or at the initiative of the firm, in the course of performing a relevant function;

“Bank” means the Central Bank of Ireland;

“certified person” has the meaning assigned to it by section 55 of the Investment Intermediaries Act 1995 (No. 11 of 1995);

“consumer” means any of the following:

- (a) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3,000,000 (for the avoidance of doubt, a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate);
- (b) incorporated bodies having an annual turnover of €3,000,000 or less in the previous financial year (provided that such body shall not be a

member of a group of companies having a combined turnover greater than the said €3,000,000);

and includes, where appropriate, a potential 'consumer' (within the meaning above);

"controlled function" means a function prescribed as a controlled function under the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 (S.I. No. 437 of 2011);

"CPD" means continuing professional development;

"grandfathered person" has the meaning assigned to it under Section 1.5 of the Minimum Competency Code;

"information" means the provision of information to a person, whether at the person's request or at the initiative of the firm, that may assist the person in the choice of retail financial product, or in the context of the provision of MiFID services or activities. For the avoidance of doubt, this does not include any of the following:

- (a) employees only pointing out where clients can find information;
- (b) the mere provision of information of a general nature, provided that the purpose of that activity is not to help the person conclude or fulfil a contract in relation to a retail financial product or MiFID services or activities;
- (c) the provision of a brochure or booklet or other similar document to a person, without giving additional information with regard to its content or providing any follow up investment services or advice to that person;
- (d) information given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to use any specific retail financial product or any specific provider of such products;
- (e) information given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to use a specific retail financial product or any specific provider of such products and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, to use any particular retail financial product or any specific provider of such products;
- (f) information given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to

use any specific retail financial product or any specific provider of such products;

- (g) providing information on an incidental basis in conjunction with some other professional activity (which professional activity is not subject to the Minimum Competency Code), so long as the purpose of the activity is not to assist a person to enter into or to become entitled to benefit under, terminate, exercise any right or option under, or take any benefit from one or more retail financial products;
- (h) information provided by employees who perform back-office functions and do not have direct contact with clients.

“MiFID II” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014¹ on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

“MiFID services or activities” means services or activities related to financial instruments or structured deposits as set out in Section A and Section B of Annex I to MiFID II that are carried out by firms subject to MiFID II;

“Minimum Competency Code” means the standards issued pursuant to section 50 of the Central Bank Reform Act 2010 (No. 23 of 2010);

“new entrant” means:

- (a) an individual who wishes to act for the first time in a controlled function the exercise of which includes any of the relevant functions but who does not hold a recognised qualification; or
- (b) an individual who wishes to act for the first time in a controlled function the exercise of which includes the provision of MiFID services or activities but who does not have at least six months’ experience on a full time equivalent basis; or
- (c) an individual who already meets the standards set out in Section 1.3(a) of the Minimum Competency Code in respect of a relevant function but who wishes to undertake a new relevant function in respect of which the individual does not meet the standards set out in Section 1.3(a) of the Code.

“person” means a natural person or legal person;

“prescribed script function” means exercising a controlled function within a narrow and rigid set of criteria and according to a prescribed script and routine;

“professional designation” means a designation conferred by a professional educational body to indicate that the holder has specified qualifications, training or expertise;

¹OJ L 173, 12.6.2014, p. 349

“pro-rata adjustment” means—

- (a) an adjustment to the requirement to obtain a relevant recognised qualification and relevant experience required to be completed under the Minimum Competency Code in accordance with Section 1.4 (e)(ii) of the Minimum Competency Code, or
- (b) an adjustment to the number of CPD hours required to be completed under the Minimum Competency Code in accordance with Section 1.7.4 of the Minimum Competency Code;

“qualified person” means a person with one or more recognised qualifications as set out in the Minimum Competency Code, which are relevant to the function to be exercised;

“recognised qualification” means a qualification listed at Appendix 4 of the Minimum Competency Code;

“register” means a register of accredited persons established and maintained pursuant to Regulation 7;

“regulated firm” means any of the following:

- (a) a financial services provider authorised, licensed or registered by the Bank (except moneylenders authorised under the Consumer Credit Act 1995 (No. 24 of 1995));
- (b) a certified person;
- (c) a financial services provider authorised, licensed or registered in another EU or EEA Member State when providing services into the State on a branch or cross-border basis, except where responsibility for requirements in relation to the provision of such services into the State is reserved to that provider's home state regulator by a provision of EU law;

“relevant function” means any function specified in Section 1.2 of the Minimum Competency Code;

“retail financial product” means those products listed at Appendix 1 of the Minimum Competency Code.

Part 2

GENERAL REQUIREMENTS

General obligation to ensure compliance with Minimum Competency Code

3. A regulated firm shall ensure that a person subject to the Minimum Competency Code, other than a regulated firm, performing a relevant function on its behalf, including but not limited to a third party performing outsourced activities on its behalf, complies with the standards set out in that Code.

General obligation to ensure appropriate competence and skills

4. A regulated firm shall ensure that a person subject to the Minimum Competency Code performing a relevant function on its behalf has obtained the competence and skills appropriate to the relevant function, through experience or training gained in an employment context.

Approval of online processes

5. A regulated firm providing services on an online platform shall ensure that the process for the selection of products and any advice or information provided on foot of that selection process are approved in writing by a person who meets the standards set out in Section 1.3(a) and Section 2.2 of the Minimum Competency Code, as applicable.

Processes applicable to prescribed script functions

6. A regulated firm shall ensure that the following conditions are satisfied where a prescribed script function is performed on its behalf:

- (a) the criteria, script and routine are devised by a person who meets the standards set out in Section 1.3(a) of the Minimum Competency Code;
- (b) the person performing the prescribed script function is—
 - (i) supervised by a person who meets the standards set out in Section 1.3(a) of the Minimum Competency Code, and
 - (ii) monitored to ensure that there is no breach of the requirements set out in Section 1.6 of the Minimum Competency Code;
- (c) the person performing the prescribed script function has completed a training programme organised by the regulated firm which is relevant to the function to be exercised, or has obtained part of a relevant recognised qualification;
- (d) the person performing the prescribed script function completes additional training on an ongoing basis, which is relevant to the function to be exercised, to keep the person's knowledge up to date;
- (e) the regulated firm maintains records to demonstrate compliance with the requirements set out in Section 1.6 of the Minimum Competency Code.

Obligation to establish and maintain register of accredited persons

7. (1) A regulated firm shall establish and maintain a register which shall record the following information in respect of an accredited person for whom the firm is responsible under Regulation 3:

- (a) the name of the accredited person performing a relevant function;
- (b) qualification, grandfathered status, transitional status, new entrant, or prescribed script function;

- (c) the relevant function and related retail financial product in respect of which the person is an accredited person;
- (d) the date the person obtained a recognised qualification and completed relevant experience, or was grandfathered;
- (e) if the person is a new entrant:
 - (i) the date of commencement of the function;
 - (ii) the qualification being pursued.

(2) A regulated firm shall ensure that each branch office has a register of all accredited persons working in that branch.

(3) A regulated firm shall remove the following persons from its register:

- (a) a person whose professional designation has been removed or otherwise suspended for failure to comply with the CPD requirements;
- (b) a grandfathered person, or a holder of a recognised qualification the ongoing maintenance of which is not dependent on the completion of CPD, who has failed to complete 15 hours of CPD, as required by the Minimum Competency Code, having previously failed to comply with that requirement within the past five years.

(4) A regulated firm shall restore promptly to its register any person who has been removed from the register for non-compliance with the CPD requirements but who otherwise has complied with the Minimum Competency Code, once he or she is again in full compliance with the CPD requirements.

Process for confirmation of competency to consumer

8. (1) A regulated firm shall provide a consumer, upon request, with a certificate on the firm's headed stationery, in the format prescribed in the Schedule to these Regulations, confirming that a person performing a relevant function, for whom the firm is responsible under Regulation 3, meets the standards set out in Part 1 of the Minimum Competency Code.

(2) A regulated firm shall ensure that the certificate is signed by an appropriate person within the regulated firm.

(3) A regulated firm shall maintain a record of the certificates issued and carry out an annual review to ensure they are accurate and up to date.

Part 3

NEW ENTRANTS

Supervision of new entrants

9. (1) A regulated firm shall—

- (a) inform a new entrant for whom the firm is responsible under Regulation 3, before the new entrant commences performing a relevant function, of the requirement to obtain—
 - (i) a relevant recognised qualification, and
 - (ii) in respect of MiFID services or activities, at least 6 months' relevant experience,
 - within 4 years of commencing the performance of such a relevant function,
- (b) agree with the new entrant a plan for obtaining a recognised qualification and, in the case of MiFID services or activities, relevant experience, immediately upon commencing a relevant function, and monitor the new entrant's progress in adhering to this plan, and
- (c) ensure the new entrant undergoes a training programme organised by the regulated firm which is relevant to the function to be exercised, or has obtained part of a relevant recognised qualification for that particular function prior to dealing with consumers.

(2) A regulated firm shall establish, maintain and adhere to procedures to ensure that new entrants for whom the firm is responsible under Regulation 3 are adequately supervised, and such procedures shall ensure at least the following:

- (a) until the new entrant obtains a recognised qualification in respect of the function carried out and at least 6 months' relevant experience in the case of MiFID services or activities, that all documentation relating to the performance of a relevant function is checked and approved in writing by a person who meets the standards set out in Section 1.3(a) of the Minimum Competency Code for that function;
- (b) when a new entrant is performing a relevant function, that an initial period is specified during which the new entrant must be accompanied at all times by a person who meets the standards set out in Section 1.3(a) of the Minimum Competency Code;
- (c) provision for incremental reduction in the level of accompaniment for a new entrant following the initial period referred to in subparagraph (b);
- (d) that there are regular meetings and contact between the supervisor and the new entrant;
- (e) that each supervisor shall supervise no more than 7 new entrants.

(3) A regulated firm shall, within two months of a new entrant for whom the firm is responsible under Regulation 3 commencing performance of a relevant

function, carry out an assessment of the performance of that new entrant to determine the following:

- (a) the length of the initial period for the purposes of paragraph (2)(b);
- (b) the frequency of meetings and contact with the new entrant for the purposes of paragraph (2)(d).

(4) For the purposes of paragraph (2)(c), a regulated firm shall carry out an assessment for each incremental reduction in supervision to determine the appropriate level of supervision for the new entrant.

(5) The assessment referred to in paragraph (3) shall be documented and take the following into account:

- (a) the nature and complexity of the functions undertaken by the new entrant;
- (b) the quality of the advice or information or services provided by the new entrant to consumers;
- (c) the new entrant's knowledge of and compliance with regulatory and legislative requirements relevant to the new entrant's role;
- (d) any complaints in relation to the new entrant;
- (e) the ethics and behaviour of the new entrant.

(6) In the case of a tied agent that is a new entrant—

- (a) a regulated firm may supervise that tied agent that is a new entrant provided the tied agent is tied only to that regulated firm, and
- (b) where a regulated firm supervises that tied agent that is a new entrant in accordance with subparagraph (a), supervision must be by a person who is a qualified person or a grandfathered person for the function being performed by the tied agent and who is—
 - (i) an employee of the regulated firm, or
 - (ii) a tied agent of the regulated firm provided—
 - (I) that tied agent is tied only to that regulated firm and the regulated firm takes full responsibility for the activities of that tied agent, and
 - (II) the regulated firm has entered into a formal written arrangement with the tied agent which sets out the criteria for the supervision of the new entrant and specifies the arrangements for reporting to the regulated firm on the new entrant's performance.

(7) Paragraphs (2) to (5) shall not apply to a new entrant who has at least four years' recent relevant experience, evidenced by supporting documentation, in another jurisdiction.

Maintenance of records — new entrants

10. A regulated firm shall ensure that the following written records are maintained in respect of new entrants for whom the firm is responsible under Regulation 3:

- (a) the date the individual commenced the function;
- (b) details of the training or part of a recognised qualification completed by the new entrant prior to dealing with a consumer;
- (c) the qualification being obtained and details of relevant experience completed;
- (d) details of the arrangements for supervision by a person who meets the standards set out in Section 1.3(a) of the Minimum Competency Code, including the name of the supervisor, the date supervision commenced and the level of supervision;
- (e) the length of the initial period during which the new entrant was accompanied at all times;
- (f) for each incremental reduction in supervision—
 - (i) the assessment of the performance of the new entrant,
 - (ii) the criteria for reducing the level of supervision, and
 - (iii) the level of reduced supervision;
- (g) records of meetings between the supervisor and the new entrant;
- (h) records of each instance in which a new entrant does not avail of an opportunity to sit an examination and the reason for same;
- (i) in relation to any pro-rata adjustments—
 - (i) the extent of adjustment,
 - (ii) the reason for adjustment, and
 - (iii) where appropriate, medical certification of illness;
- (j) in relation to Regulation 9(7), supporting documentation to confirm the relevance and level of a person's experience;
- (k) any other relevant documentation.

Part 4

GRANDFATHERING REQUIREMENTS

Provision of Statement of Grandfathered Status

11. A regulated firm shall provide a Statement of Grandfathered Status to a grandfathered person when that person ceases employment with the regulated firm, or at any other time at the request of the grandfathered person.

Retention of records — grandfathered status

12. A regulated firm shall retain any records and documentation necessary to create and confirm the content of a duplicate of each Statement of Grandfathered Status provided under Regulation 11.

Part 5

MONITORING BY REGULATED FIRMS

Annual review

13. (1) A regulated firm shall carry out an internal annual review of the following:

- (a) the qualifications of an employee subject to the Minimum Competency Code to ensure that—
 - (i) a recognised qualification held by that employee for the purposes of Part 1 of the Minimum Competency Code is appropriate to the employee's corresponding function referred to in Part 1 of that Code, and
 - (ii) a qualification held by that employee for the purposes of MiFID services or activities within the scope of Part 2 of the Minimum Competency Code meets the requirements of Part 2 of that Code;
- (b) the development and experience needs of an employee subject to the Minimum Competency Code, taking account of regulatory developments and any new retail financial products offered by the firm.

(2) A regulated firm shall ensure that an employee subject to the Minimum Competency Code is aware of, understands and applies the firm's internal policies and procedures designed to ensure compliance with the relevant regulatory requirements.

Procedures — CPD

14. (1) A regulated firm shall establish, maintain and adhere to procedures to ensure that a person who is subject to the standards set out in Section 1.3(a) or Section 2.2 of the Minimum Competency Code complies with the applicable CPD requirements of that Code on an ongoing basis.

(2) A regulated firm shall ensure that the procedures referred to in paragraph (1) include, at a minimum, provision for the following:

- (a) regular monitoring, which must be carried out at least once within the first 9 months of each year and once no later than 6 weeks after the end of each year, for the purposes of verifying—
 - (i) the number of hours of CPD completed and planned to be completed, and
 - (ii) the relevance of the content of CPD completed or planned to be completed;
- (b) the action to be taken by the regulated firm in respect of suspected breaches of CPD requirements;
- (c) the action the regulated firm will take to obtain information from professional educational bodies regarding its employees' compliance with the requirements of the professional educational body's CPD scheme, where the employee is a member of that professional educational body's CPD scheme.

(3) Where an employee of a regulated firm is a member of a CPD scheme administered by a professional educational body that provides a qualification that meets the standards of the Minimum Competency Code, that regulated firm may, subject to the regulated firm remaining responsible at all times for compliance with its obligations under these Regulations, rely on information provided by the professional educational body concerned regarding the employee's compliance with the requirements of the relevant CPD scheme.

Retention of records — CPD

15. A regulated firm shall ensure that it retains the following written records in respect of CPD requirements:

- (a) records of all monitoring by the regulated firm of compliance with CPD requirements by persons who are subject to any standards set out in Section 1.3(a) and Section 2.2 of the Minimum Competency Code;
- (b) records demonstrating compliance with the CPD requirements by persons who meet the standards set out in Section 1.3(a) and Section 2.2 of the Minimum Competency Code;
- (c) records of all breaches of the CPD requirements by persons who are subject to any standards set out in Section 1.3(a) and Section 2.2 of the Minimum Competency Code;
- (d) records in relation to any pro-rata adjustments including—
 - (i) the extent of the adjustment,
 - (ii) the reason for the adjustment, and
 - (iii) where appropriate, medical certification of illness;

- (e) any other relevant documentation.

Part 6

MISCELLANEOUS PROVISIONS

Obligations with regard to transitional arrangements for credit servicing

16. A regulated firm shall, in respect of a person for whom the firm is responsible under Regulation 3 and who avails of the transitional arrangements referred to in Section 1.8 of the Minimum Competency Code—

- (a) monitor compliance with the conditions applicable to those transitional arrangements, and
- (b) where an opportunity to sit an examination is not availed of by a person availing of the transitional arrangements, ensure that the reasons are documented in writing.

General obligation to retain records

17. (1) A regulated firm shall retain records demonstrating the compliance of a person for whom the firm is responsible under Regulation 3 with the Minimum Competency Code.

(2) Subject to paragraph (3), records referred to in paragraph (1) shall be retained for a minimum period of 6 years after the date the person ceases to perform a relevant function on behalf of the regulated firm.

(3) In respect of the retention of records relating to grandfathered persons, regulated firms shall remain subject to the obligations of Regulation 12 and Regulation 15(b) after the minimum period referred to in paragraph (2) has passed.

SCHEDULE

Certificate of Competency

I, _____(name) _____(job title) certify that the undermentioned

_____ (name of accredited person)

meets the Minimum Competency Standards and is deemed competent in respect of the following products/functions:

Example:

- *providing advice or information on and arranging:*
 - *housing loans*
 - *private medical insurance*
 - *pension products*
- *dealing with claims.*

This Certificate is valid from [insert date]

Signed by: _____

Job Title: _____

Date of signing: _____

This Certificate remains the property of [the *regulated firm*].

Signed for and on behalf of the CENTRAL BANK OF IRELAND,

25/ August 2017.

Bernard Sheridan

BERNARD SHERIDAN,

Deputy Governor (Financial Regulation).

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations impose requirements on regulated firms to ensure that a person subject to the Minimum Competency Code, acting on their behalf, complies with the standards set out in that Code. This includes an obligation on regulated firms to establish and maintain a register of accredited persons, and requirements relating to the supervision of new entrants, the retention of relevant records and monitoring by regulated firms.

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