



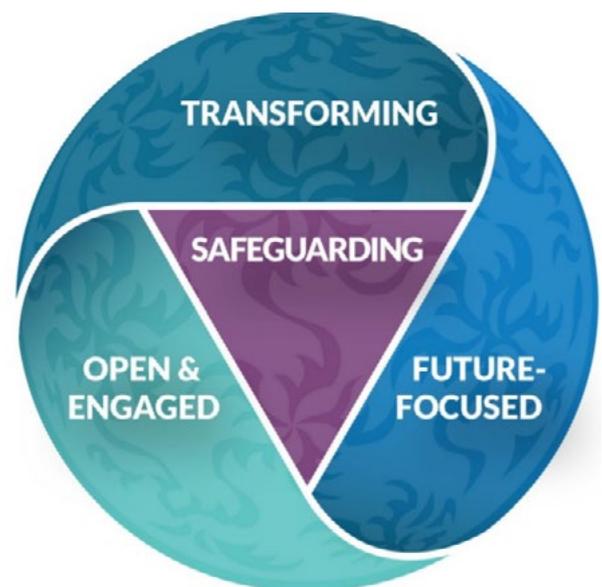
## Central Bank Outsourcing Guidance for all Regulated Firms

December 2021

*On 17 December 2021, the Central Bank published cross-industry guidance for Irish regulated financial service providers (**RFSPs**) on the management of outsourcing activities (the **Guidance**). The following FAQ is intended to support regulated firms' assessment of their compliance obligations under the Guidance in respect of any existing or planned outsourcing.*

### WHAT IS THE BACKGROUND TO THE PUBLICATION OF THE GUIDANCE?

The publication of the Guidance is designed to support the key strategy pillars outlined in the Central Bank's 2022-2026 strategy and specifically the 'safeguarding' strategy pillar which targets the maintenance of financial system resilience through the development of the regulatory policy and supervisory frameworks. Other recent Central Bank policy initiatives in this area include the cross-industry Operational Resilience Guidelines published on 1 December 2021 (see [here](#) for further details) and the proposal for macro-prudential measures for property funds (see [here](#) for further details). As a result, the Guidance should be read in this context and in conjunction with the Central Bank's Operational Resilience Guidelines, a key aspect of which is the management of outsourcing risk.



*Central Bank 'Our Strategy' September 2021*

## WHAT IS THE PURPOSE OF THE GUIDANCE?

The Guidance sets out the Central Bank’s expectations and good practice for the governance, risk management and business continuity management of outsourcing arrangements in line with existing sectoral rules applicable to RFSPs. The Guidance is additional to and does not supersede relevant existing sectoral rules but where such rules *‘are less prescriptive or [are] silent on certain matters, it is the Central Bank’s expectation that regulated firms refer to the supervisory expectations set out in [the] Guidance, which is deemed good practice in the governance and management of outsourcing risk’.*

## WHAT IS THE EFFECTIVE DATE OF THE GUIDANCE?

The Guidance is effective immediately, however the Central Bank has confirmed that, when supervising RFSPs, it will take account of the necessity for *‘adjustments’* to comply with the Guidance.

## TO WHICH FIRMS DOES THE GUIDANCE APPLY?

The Guidance is applicable to all RFSPs but may be applied on a proportionate basis (subject to a documented and *‘robust outsourcing risk assessment’*) taking account of a RFSP’s nature, scale and complexity and the extent to which it outsources its activities.

## HOW IS THE GUIDANCE STRUCTURED?

The Guidance is structured to include measures for each stage of the outsourcing lifecycle. The following summarises, at a high level, the key Guidance for each stage:

### Pre-Outsourcing

RFSPs must adopt:

- › a business-model- specific outsourcing **strategy**
- › a strategy-informed outsourcing **policy** for:
  - classifying critical or important activities
  - performing due diligence
  - ensuring internal controls of outsourcing
  - record keeping
- › an outsourcing **risk management framework**

### Outsourcing Arrangements

must:

- › be subject to written **contacts** supported by **SLAs** incorporating prescribed contractual provisions for critical/important outsourcing (termination, access, audit rights)
- › be subject to **ongoing monitoring and review** (internal audit/third-party)
- › ensure **continuity of services** through robust disaster recovery and business continuity management

### Ongoing Regulatory notifications

include:

- › timely notification of **critical or important outsourcing** (not on a pre-approval basis) and material changes to such arrangements
- › **adverse incident reporting**
- › periodic filing of **outsourcing register** by RFSPs with PRISM rating of medium-low or above

### Post-Outsourcing Arrangements

must include:

- › robust disaster recovery (**DR**) and business continuity management (**BCM**) plans aligned with OSP’s DR and BCM plans
- › **exit strategies** being viable, planned, documented, tested strategies including for OSP substitutability

## HOW DOES THE GUIDANCE DIFFER FROM THE DRAFT VERSION TABLED FOR INDUSTRY CONSULTATION (CP138)?

As anticipated, no wholesale changes to the consultation version of the Guidance have been made and the Guidance materially reflects the CP 138 proposals published in April 2021 (see [here](#) for our CP138 briefing). The Feedback Statement addresses the most material and/or consistently raised aspects of the consultation responses; these resulted in no, or only limited, amendments to the Guidance.

## TO WHICH ACTIVITIES/FUNCTIONS DOES THE GUIDANCE APPLY?

The Guidance applies principally to the outsourcing and sub-outsourcing of critical or important functions and, being relatively agnostic as to the status of the outsource service provider (**OSPs**), is applicable to both intragroup (including, branch to branch and branch to parent) and third-party outsourcing arrangements. Certain of the measures in the Guidance (principally those relating to the governance of outsourcing arrangements) apply in respect of all outsourcing arrangements and RFSPs are encouraged, ‘as a matter of good practice’, to apply the Guidance to the outsourcing of non-critical or less important activities.

## DOES THE GUIDANCE DISTINGUISH BETWEEN THIRD-PARTY AND INTRAGROUP ARRANGEMENTS?

As set out in the Feedback Statement, the Central Bank considers ‘that intragroup arrangements should not be treated as less risky than arrangements with third parties outside a firm’s group’. However, the Central Bank does acknowledge that RFSPs may in practice exercise discretion over the application of the Guidance to the management of intragroup arrangements where the RFSP can ‘demonstrate its capacity to exercise [control or influence] over the [OSP]’. The Central Bank, however, considers that measures under the Guidance in respect of the management of conflicts of interest and those relating to exit strategies and termination of outsourcing arrangements are equally as applicable to intragroup as they are to third party outsourcing arrangements.

## HOW SHOULD RFSPS CLASSIFY ACTIVITIES AS CRITICAL OR IMPORTANT?

The Guidance does not prescribe any activities as critical or important but instead requires RFSPs to adopt, document, and periodically review, a business-model-specific activity classification methodology in accordance with relevant sector-specific rules (as referenced in Appendix 2 to the Guidance) and taking account of the definition of critical or important activities set out in the EBA Guidelines on Outsourcing:

*“Functions that are necessary to perform core business lines or critical business functions should be considered as critical or important, unless the institution’s assessment establishes that a failure to provide the outsourced function or the inappropriate provision of the outsourced Function would not have an adverse impact on the operational continuity of the core business line or critical business function”.*

## WHAT MEASURES APPLY TO SUB-OUTSOURCING/CHAIN OUTSOURCING UNDER THE GUIDELINES?

Sub-outsourcing (also called chain outsourcing) is one of several key outsourcing risks, the management of which must be provided for in a RFSPs outsourcing risk management framework (see pre-outsourcing measures in the above graphic). The Central Bank expects RFSPs to manage sub-outsourcing risk including through the agreement of appropriate contractual provisions in outsourcing arrangements (e.g., for sub-OSP compliance with RFSPs' relevant legal and regulatory obligations and sub-OSP providing access and audit rights on same terms for RFSP and the Central Bank as for OSP) and by the OSP monitoring, overseeing and managing sub-OSPs. In the case of sub-outsourcing of critical or important activities, RFSPs themselves should oversee and monitor the sub-OSP.

## WHAT ARE THE NEXT STEPS FOR IMPLEMENTATION OF THE GUIDELINES?

As set out above, the Guidance is now in final form and took effect from publication on 17 December 2021. However, templates supporting ongoing regulatory engagement measures (see above graphic) remain outstanding:

### *Notification of outsourcing of critical or important functions*

The Central Bank will publish templates for the notification of planned critical or important outsourcing arrangements in Q1 next year. Notably, the notification of such proposed arrangements does not constitute a pre-approval process and specific timings in respect of the submission of notifications are not prescribed unless required by existing sectoral rules.

### *Submission of outsourcing registers*

A spreadsheet template for the outsourcing register will be made available by the Central Bank in Q1 2022. RFSPs with a PRISM rating of medium low or above will be required to submit their outsourcing registers via the ONR on an annual basis, with the first submission date expected to be in Q2 2022. Low impact firms will only be required to file their outsourcing register on request from the Central Bank.

## HOW CAN WILLIAM FRY HELP?

William Fry can help regulated firms by:

- undertaking a gap analysis of compliance with existing relevant sectoral rules against the Guidance;
- reviewing and updating outsourcing policies and procedures, to ensure they comply with the Guidance and/or relevant sectoral rules;
- reviewing and updating outsourcing agreements and SLAs with OSPs;
- providing training and advice on the management and mitigation of outsourcing risk, including the Central Bank's expectations of boards and senior management;
- helping regulated firms comply with sectoral guidance on outsourcing and delegation; and
- advising on regulatory inspections and enforcement in relation to outsourcing.

## CONTACT US

Please contact Shane Kelleher, John O'Connor, Louise McNabola, Maire O'Neill, any of the FinTech Group or your usual William Fry contact with any queries on the issues addressed in this briefing.



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