Ireland pinpoints payments industry as a target for growth

The payments sector in Ireland has been identified by the Irish government as an area ripe for growth, but currently, while Ireland is for example a hotbed for R&D in payments technology, the number of regulatory authorisations given to payments and e-money businesses in the country has been limited. Joshua Hogan and Daniel Moore of McCann FitzGerald explain the authorisation framework in Ireland and the efforts of the Central Bank of Ireland to improve matters.

The intersection of technological and financial expertise within a favourable business environment suggests that Ireland should be leading the way as a jurisdiction for regulated payments businesses seeking to access the EU market. Certainly, there are examples of successful payments businesses that have chosen to obtain authorisation in Ireland (these include CurrencyFair, a peer-to-peer foreign exchange platform which has as at June 2015 processed over €2 billion in payments, and Realex Payments, which was recently acquired by US-based Global Payments for €115 million). In addition, significant R&D investments in payments technology have been made in Ireland by major global corporations, including by Citi's and MasterCard's innovation labs.

However, concerns have been expressed regarding the limited number of regulatory authorisations granted to payments and e-money businesses in Ireland[1]. These concerns appear to be borne out by the numbers. As at 5 June 2015, only 12 payment institutions stood authorised by the Central Bank of Ireland (the 'CBI') to provide payment services for the purposes of the Payment Services Directive 2007/64/EC (the 'PSD'). No e-money institutions have been authorised by the CBI under the E-Money Directive 2009/110/EC (the 'EMD')[2].

The potential of the payments sector for the Irish economy has been recognised at government level. A recent government policy document[3] setting out a five year strategy for Ireland's international financial services sector highlighted the payments industry as a particular target for growth over the coming years.

This target depends on leveraging Ireland's favourable tax regime, educated workforce, and pro-business environment that has attracted investment from some of the biggest names in technology: Google, Facebook and Apple have all established significant operations in Ireland. Dublin has also successfully positioned itself as a start-up hub for smaller enterprises, including those in the financial technology or 'FinTech' sector, with strengths in dynamic currency conversion, payment card industry compliance and payment processing platforms.

Smaller or start-up enterprises in the financial services sector can be keen to obtain regulation as a 'badge of quality' and to provide reassurance to investors and potential customers alike that client funds are secure and that their activities are subject to the appropriate regulatory oversight. A transparent, efficient and cost effective authorisation process is therefore crucial to the success of such businesses.

Authorisation framework in Ireland

The CBI is the competent authority in Ireland for the authorisation and supervision of payment and e-money institutions and appears to be responding to such concerns. In a speech[4] by the CBI's Director of Consumer Protection Bernard Sheridan on 28 May 2015, the CBI's role in relation to the authorisation and supervision of payment and e-money institutions was described as that of "gatekeeper, supervisor and policy maker/influencer."

Regarding the CBI's "gatekeeper" role, Mr Sheridan stated: "Our authorisation process is subject to on-going review and we have been considering how we can move to a more effective and facilitative approach to progressing applications which meet the authorisation standards. Feedback received from a number of sources has been useful in helping us review and refine our approach."

The CBI has indicated that it will make a number of improvements to its authorisation processes. These include:

- an optional pre-application meeting with the CBI to discuss the authorisation process and key areas to be addressed in the formal application;
- improved transparency regarding the authorisation process to ensure that an applicant is kept updated about the status of its application; and
- improved clarity around timelines for the CBI's review of applications.

Of course, the authorisation process is a two-way street: the CBI can only assess an application based on the quality and timeliness of the information presented to it. As regulator, the CBI will not act as legal or commercial advisor to applicants. This is consistent with the CBI's approach to regulatory authorisations generally: it is for the applicant to demonstrate that it is capable and willing to meet the required standards. Professional advice is therefore crucial both for the application process and ongoing compliance with regulatory requirements.

Small payment institutions

European Member States, when implementing the PSD, had a choice of whether to waive (or allow their competent authorities to waive) the application of most of the supervision and authorisation requirements for small payment institutions ('SPIs'). SPIs are, broadly speaking, entities whose payment transactions volume (actual or projected) does not exceed €3 million per month. SPIs cannot avail of the passporting regime under the PSD to provide their services in other EU Member States and national regulators may restrict the activities of SPIs to specific payment services.

The European Communities (Payment Services) Regulations 2009 transposed the PSD into Irish law. Regulation 35(1) gives the CBI a broad discretion to waive supervision and authorisation requirements for SPIs seeking to establish in Ireland. The CBI has not to date exercised this discretion and there are currently no SPIs registered in Ireland. Instead, it appears that the CBI does not distinguish between the criteria applicable to the authorisation of SPIs and other payment institutions.

An application for a 'full' payment institution authorisation is a significant exercise. Entities seeking authorisation as payment institutions must, amongst other things, provide detailed information relating to capital requirements, safeguarding of payment service users' funds, anti-money laundering and counter terrorist financing compliance and staffing levels. A detailed programme of operations and business plan is also required.

In the UK, SPIs significantly outnumber payment institutions suggesting that authorisation as an SPI is attractive to budding payments businesses. One option to assist with the development of Ireland's payments industry, particularly for smaller or start-up enterprises in the FinTech area, might be for the CBI to consider using its discretion to register SPIs using a less rigorous application process. This discretion could be exercised on a case-by-case basis subject to the overriding requirement of consumer protection. An SPI could then apply for a 'full' authorisation (which would provide EU passporting rights) once their transaction volume increases.

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Keeping pace with innovation

Advances in technology and changing consumer preferences continue to give rise to new and innovative payment services businesses. Upcoming revisions to the PSD and the EMD will create new challenges and opportunities in this area. A sophisticated and supportive regulatory environment is a key consideration when choosing a jurisdiction in which to become established.

In order to achieve the policy aim of positioning Ireland as a global payments hub and leader for FinTech, Ireland must ensure its attractiveness as a place to do business is enhanced by its regulatory framework. The CBI has made clear its commitment to playing its part in effectively, expeditiously and efficiently authorising and supervising payment businesses to ensure that the highest standards are set and met. This is most welcome and it will be interesting to see whether this will lead to an increase in the number of payment institutions, potentially including SPIs, established in Ireland.

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1. http://www.irishtimes.com/business/financial-services/us-payments-firms-raised-concerns-over-irish-regulation-1.2202636
2. Of course, not all payments activity in Ireland needs to be carried out by entities specifically authorised as payment or e-money institutions. Much of this activity is carried on in Ireland by entities holding other authorisations, notably banks. There are some 430 credit institutions domiciled in or offering services from Ireland.
3. IFS 2020: A Strategy For Ireland's International Financial Services Sector 2015-2020, available at http://www.finance.gov.ie/sites/default/files/IFS2020.pdf
4. http://www.centralbank.ie/press-area/speeches/Pages/AddressbyDirectorofConsumerProtectionFintech.aspx