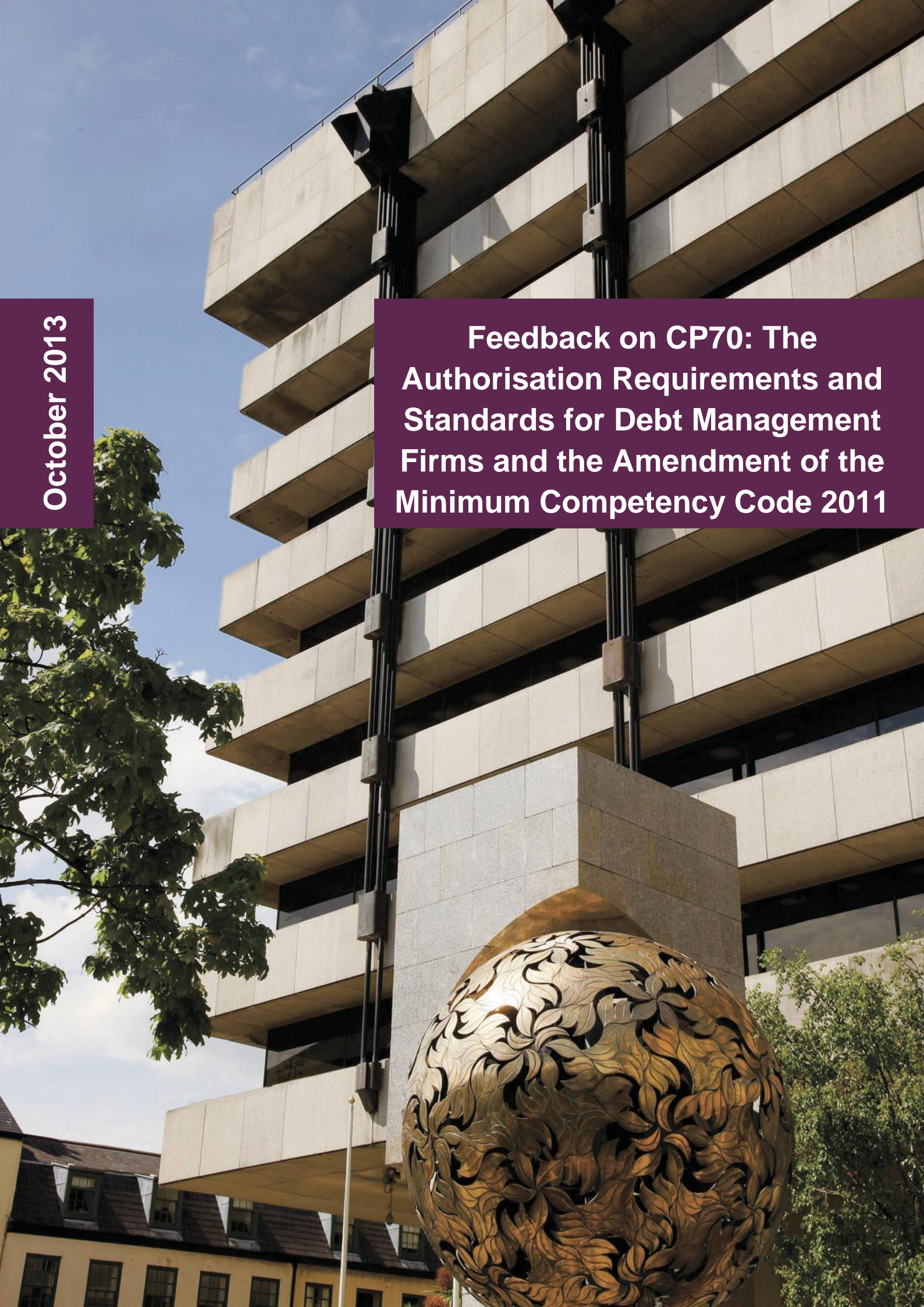


October 2013

**Feedback on CP70: The
Authorisation Requirements and
Standards for Debt Management
Firms and the Amendment of the
Minimum Competency Code 2011**



1. Introduction

Consultation Paper CP70 on the *Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011* was published on 30 July 2013. The consultation closed on 23 September 2013 and 19 responses were received by that date.

CP70 set out proposals in respect of the regulatory regime to be applied to debt management firms, reflecting the following principles:

- Ensuring an appropriate prudential regulatory regime for debt management firms;
- Ensuring that debt management firms have the facilities and resources to provide a continuous service to their clients; and
- Fostering confidence amongst clients of debt management firms that these firms are subject to a robust regulatory regime.

The Central Bank is grateful to all parties who responded to the consultation and we thank them for their time and effort. All responses to the consultation are available on our website at the following address:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx>

Please note that this document is for information purposes only. It does not form part of the Authorisation Requirements and Standards for Debt Management Firms. This document does not constitute legal advice and should not be used as a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all regulated entities to ensure their compliance with the Authorisation Requirements and Standards for Debt Management Firms.

2. Summary

Category of Respondent	Number of Submissions
Consumer bodies/firms acting on behalf of consumers	1
Industry and other representative bodies	4
Industry participants, consumers and individuals	14
Overall Total	19

The following are the main issues highlighted by respondents in respect of the proposals set out in CP70:

1. Professional Indemnity Insurance (PII) Cover
2. Compliance and Internal Audit Activities
3. Qualifications under the Minimum Competency Code 2011 (MCC)
4. Short timeframe from finalisation of Authorisation Requirements and Standards for Debt Management Firms to deadline for submission of applications to the Central Bank.

Details of the submissions made in respect of these issues and the relevant conclusions following careful consideration of these submissions are set out below.

3. Main Issues Highlighted

3.1 Professional Indemnity Insurance (PII) Cover

Section 33A(5) of the Central Bank Act 1997 (the 1997 Act) provides that the Central Bank of Ireland (Central Bank) may impose on a debt management firm a condition or requirement to effect a policy of PII.

CP70 proposed that a debt management firm must put in place PII cover equivalent to the total value of all the debts of consumers related to the services of the debt management firm,

subject to a minimum cover of €1,500,000, with no limit on the number of claims in any one year.

3.1.1 Submissions

Many respondents shared the view:

- that the proposed level of cover was too high and would be too costly;
- that the cover required for retail intermediaries (€1.25m per claim and €1.85m aggregate) or personal insolvency practitioners (“PIPs”) (€1m per claim and €1.5m aggregate) would be sufficient.

Some respondents also identified that the level of PII proposed was disproportionate to the activities of debt management firms given they do not hold client funds.

3.1.2 Central Bank

Having considered the submissions on this issue, the Central Bank has reassessed the level of PII cover that debt management firms should be required to hold to ensure adequate protections for consumers who avail of the services of these firms. The Central Bank considers that PII, together with the solvency requirement to be imposed on these firms, provide essential safeguards to protect consumers and are proportionate to the activities undertaken by these firms. In reassessing the level of PII to be required, the similarity of the activities and risk profiles of debt management firms and retail intermediaries has been considered. On that basis, the Central Bank saw merit in applying a consistent level of cover to similar types of regulated firms, especially as we had become aware that many existing intermediaries intended to apply for authorisation. (The proposed extension of the same level of PII cover requirement to IIA¹ firms is currently the subject of a separate consultation exercise.)

Considering the above factors, the Central Bank believes that the appropriate level of PII cover should be, **at a minimum**, the level currently applying to retail intermediaries i.e., the amount insured shall at a minimum provide cover for €1.25 million per claim and €1.85 million in aggregate cover in a single policy period.

¹ Investment Intermediaries Act 1995 (as amended)

3.2 Compliance and Internal Audit Activities

Section 4.5 of CP70 proposed that a debt management firm must maintain sufficient compliance arrangements to ensure that it complies with all of the obligations to which it is subject. Subsection (d) of that requirement proposed that the relevant persons involved in the compliance function of a debt management firm not be involved in the performance of services or activities they monitor i.e., debt management services. Section 4.6 of CP70 proposed that all debt management firms must have an internal audit function in place to provide independent internal oversight and specified that, where appropriate, this activity may be outsourced to a qualified third party.

3.2.1 Submissions

Most respondents in respect of this issue felt that the requirement for a dedicated compliance and internal audit function would prove too costly and is unwarranted for small firms, particularly as debt management firms will not handle client funds.

3.2.2 Central Bank

It is clear from the responses to the consultation and the early expressions of interest in seeking authorisation received from firms that many firms are very small in nature and therefore the cost of meeting the proposed compliance and audit standards could effectively exclude these firms from providing debt management services to their clients.

Therefore, the Authorisation Requirements and Standards for Debt Management Firms have been amended to more clearly reflect a proportionate approach to this requirement based on the nature, scale and complexity of firms' activities. While we consider it appropriate that all debt management firms should be subject to compliance and audit requirements, the requirement for **independent** compliance and audit resources will only apply to those firms with significant scale and complexity. This requirement will reflect that:

- All debt management firms have compliance and audit obligations;
- Independent compliance and audit resources are only required where the nature, scale and complexity of business activities require it. This will mean that smaller scale firms (including single person entities) with a low level of customers and/or turnover engaging in non-complex activities will still have compliance and audit responsibilities to address, but that the resources assigned to these activities will not need to be independent, and in

the case of single person entities can be met by the one person. Entities of significant scale or complexity will require independent compliance and audit resources. Smaller firms that scale up in terms of the level and complexity of their business activities will need to make adjustments to their compliance and audit resources proportionate to these changes; and

- A compliance officer is not required, but responsibilities for compliance and audit areas must be clearly assigned.

3.3 Qualifications under the MCC

CP70 proposed the amendment of the Minimum Competency Code 2011 (the MCC) to apply to all persons exercising a controlled function or a pre-approval controlled function in a debt management firm and to debt management firms themselves. A qualification of 'Qualified Financial Adviser' (Institute of Bankers School of Professional Finance, LIA and The Insurance Institute of Ireland) was also proposed to be included in the MCC as a recognised qualification for persons exercising certain functions in a debt management firm.

3.3.1 Submissions

Many respondents agreed with the proposed application of the Qualified Financial Adviser (QFA) qualification, while a number of respondents also suggested applying other qualifications in addition to the QFA.

3.3.2 Central Bank

The MCC will now be amended to include standards for persons providing debt management services. Persons already providing debt management services prior to the introduction of the regulatory regime for debt management firms will be permitted a transitional period to obtain a relevant recognised qualification. During that period, such persons must:

- i) register for the first available sitting of the relevant examination which the person could reasonably be expected to sit, and should the person fail to pass the examination on that occasion, each available sitting thereafter until the person obtains the qualification;
- ii) work towards obtaining examinations for the relevant qualification on a consistent and timely basis, until completion; and

- iii) maintain a record of all examinations completed, results obtained and examinations scheduled for completion.

The comments made in the submissions in relation to the appropriate recognised qualifications and the extent of the transitional period will now be considered. It is anticipated that the amended MCC, including the standards for persons providing debt management services, will be finalised by the end of the first quarter of 2014.

3.4 Timeframe between finalisation of Authorisation Requirements and Standards for Debt Management Firms and deadline for submission of completed applications to the Central Bank

3.4.1 Submissions

A number of respondents commented on the short timeframe for the submission of applications.

3.4.2 Central Bank

Provided that firms already engaged in providing debt management services prior to 1 August 2013 submit a completed and signed Application Form to the Central Bank by the **31 October 2013** deadline, the Central Bank will permit the submission of the required supporting documentation subsequently, provided it is submitted **no later than 22 November 2013**. Such firms will be deemed to have satisfied the requirements to stand authorised pending the Central Bank's full assessment of their applications.

Firms that do not submit a completed and signed Application Form by 31 October 2013 will not be deemed to stand authorised.