

# **April 2020**

# **Quick Guide: The CBI's Regulatory Toolkit**

# Part 2: Skilled Persons' Reports

This is the second in a series of four short briefings which looks at some of the key powers which the Central Bank of Ireland ("CBI") has at its disposal under the Central Bank (Supervision and Enforcement) Act 2013 (the "Act"). The powers in the Act apply to all types of regulated financial service providers, and in some cases also apply to "related undertakings" of such entities.

This briefing looks at the CBI's power to require a Skilled Person's Report to be prepared, which is set out in Part 2 of the Act. The first briefing was on directions and can be found here.

# Who does the power apply to?

The CBI can require a regulated financial service provider ("**RFSP**") or a related undertaking of a RFSP to prepare a Skilled Person's Report.

The definition of a RFSP includes a RFSP whose business is subject to regulation by another authority which performs functions in an EEA country which are comparable to the functions performed by the CBI.

The fact that the CBI can require a related undertaking of a RFSP to prepare a Skilled Person's Report means a RFSP's parent or subsidiary can be required to prepare such a report, even if the company is not a RFSP itself.



# What is a Skilled Person's Report?

It is a report on a specific matter relating to a RFSP/related undertaking of a RFSP which the CBI requires to be prepared by a third party which the CBI considers to have sufficient expertise on the relevant area, as well as sufficient detachment from the firm being reviewed.

The CBI has said that the Skilled Person may be an auditor, actuary, accountant, lawyer or any other person with the relevant business, technical or technological skills.

In its statement published in 2014 on the proposed use of these reports, the CBI said that they may be used for diagnostic purposes to identify and measure risks; as part of preventive action to limit or reduce identified risks; or as part of remedial action to allow the CBI to respond to risks which have crystallised.

# Key steps in process

### Issue of Notice

The CBI must issue a notice to the RFSP/related undertaking of the RFSP (the "Reviewee") advising it of the requirement to prepare the Skilled Person's Report. The notice must provide the Reviewee with the information set out in section 9(2) of the Act. This includes the purpose of the report, details of the matters to be reported on, the scope, form and timeframe for completion of the report, as well as any methodology to be used.

### Appointment of Reviewer

The CBI will invite the Reviewee to nominate someone to prepare the report (the "Reviewer"). If the Reviewee does not nominate someone, or the CBI does not approve of the proposed Reviewer, the CBI will appoint the Reviewer. Section 11(3) of the Act sets out various matters which the CBI will take into account in deciding whether to approve a proposed Reviewer. These include the proposed Reviewer's competence and capability, whether he/she is sufficiently detached from the Reviewee to give an objective opinion, and any conflicts of interest, particularly where the report may relate to matters concerning the quality of work previously carried out by the proposed Reviewer.

## Contract between Reviewer and Reviewee

The Reviewer is required to enter into a contract with the Reviewee which contains certain terms specified by the CBI in section 12 of the Act. The Reviewee is required to waive any duty of confidentiality owed by the Reviewer to the Reviewee, which may limit the provision of information or opinion by the Reviewer to the CBI. The CBI may request to see a copy of the draft contract and require modifications to be made to it.

# **Obligations on Reviewee**

The Reviewee is obliged to bear the costs of the Skilled Person's Report. It is also required to provide the Reviewer with such assistance as he/she may reasonably require for preparing the

report. It is an offence for any person to obstruct or impede a Reviewer in preparing a Skilled Person's Report, or to provide the Reviewer with information which he/she knows is false or misleading in a material respect.

# Are there any pre-requisites to the use of the power?

Yes – before requiring a Skilled Person's Report to be prepared the CBI is obliged to consider the following matters:

- whether any other powers may be available to the CBI under any provision of financial services legislation which may be more appropriate to use in the circumstances;
- the knowledge and experience available to the Reviewee; and
- the cost implications for the Reviewee of providing the report, the resources available to the Reviewee, and the benefit to the Reviewee of providing the report.

# Can you appeal a requirement to prepare a Skilled Person's Report to IFSAT?

No – a decision by the CBI to require a Skilled Person's Report to be prepared is not stated to be an "appealable decision" and therefore no appeal lies to the Irish Financial Services Appeals Tribunal.<sup>1</sup>

# Commentary

The Skilled Person's Report can be a useful tool for the CBI to use if it needs an impartial report to be prepared on certain matters concerning a RFSP (or a related entity), when it may not have the time or resources to carry out the review itself. It is a significant power – and hence is subject to the pre-requisites above – and can be extremely costly for the Reviewee, depending on the report's scope. Reviewees should also be aware that some of the findings in a Skilled Person's Report may form the basis of a subsequent enforcement case against the firm.

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<sup>&</sup>lt;sup>1</sup> Some statutes state that a particular provision is an "appealable decision for the purposes of Part VIIA of the Central Bank Act 1942". Where a provision states this, the matter can be appealed to the Irish Financial Services Appeals Tribunal.

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