



January 2017

## The Irish Financial Services Appeals Tribunal

The Irish Financial Services Appeals Tribunal ("**IFSAT**") was established in 2003 to hear appeals from a broad range of decisions made by the Central Bank of Ireland.

### Who can bring an appeal to IFSAT?

If the Central Bank makes a decision that a regulated entity does not agree with then, provided they are a person who is affected by that decision, they may lodge an appeal with IFSAT.


An "*affected person*" is a person whose interests are directly or indirectly affected by the decision of the Central Bank.

It is clear from the decisions of IFSAT that an affected person covers not just a person but also an organisation affected by the decision of the Central Bank.

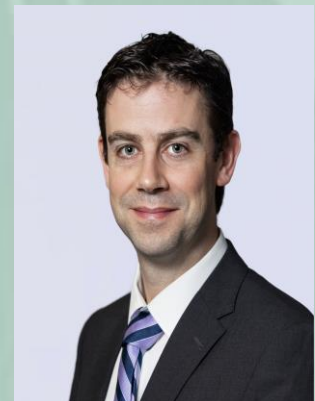
### What decisions can be appealed to IFSAT?

A person affected by the decision of the Central Bank can lodge an appeal only when the issue in question is an "*appealable decision*".

An appealable decision includes:

-  the refusal to grant authorisation or licence;

For further information on any of the issues discussed in this article please contact:



**John O'Riordan**  
DD: + 353 (0)1 673 2092  
[john.oriordan@dilloneustace.ie](mailto:john.oriordan@dilloneustace.ie)

- ▣ the revocation of authorisation or licence; and
- ▣ the imposition of administrative sanctions.

These are just some examples of the types of decisions which can be appealed to IFSAT. The schedules to the Central Bank Act, 1942 and various other pieces of financial services legislation detail other decisions of the Central Bank that can be appealed to IFSAT.

### What are the powers of IFSAT?

On hearing an appeal by an affected person in relation to an appealable decision IFSAT can:

- ▣ affirm the decision of the Central Bank;
- ▣ vary the decision of the Central Bank;
- ▣ substitute the decision of the Central Bank; or
- ▣ remit the matter back to the Central Bank for further consideration.

Importantly however the Tribunal does not have the power to set aside the Central Bank's original decision.

### What is the procedure for bringing an appeal to IFSAT?

An appeal to IFSAT is commenced by lodging of a notice of appeal. This notice must set out the decision which is being appeal against and attach all of the documentation relevant to the appeal.

The Central Bank is then given the opportunity to respond to the allegations set out in the notice of appeal following which the Tribunal will fix a date for a preliminary directions hearing.

At the directions hearing any pre-trial formalities will be addressed and a hearing date is fixed for the appeal.

While oral evidence is allowed at the appeal hearing the process is largely paper based and the Tribunal aims to narrow the issues in dispute between the parties as much as possible in advance of the hearing.

## How long does the appeal process take and who pays the costs?

IFSAT's aim is that appeals are heard as expeditiously as possible with the process generally concluding within weeks whenever possible. By making the process largely paper based the Tribunal also aims to keep the hearing itself as short as possible.

All decisions and orders made by IFSAT are published on the Tribunal's website. However, if one of the parties wants an appeal to be held in private an application can be made to the Tribunal. The parties can also look to redact names from the decisions and orders issued by the Tribunal.

More recently the Central Bank have also taken the step of publishing publicity statements arising from decisions of IFSAT on their own website.

The Tribunal has discretion to award costs in favour of either party at the determination of the appeal and importantly costs includes not only the costs of and incidental to the hearing and the determination of the appeal but also the costs of or incidental to the proceedings giving rise to the appeal.

## Does any further right of appeal exist if I am unhappy with the decision of IFSAT?

The Tribunal can either of its own volition, or on the application of either party, refer a question of law to the High Court for consideration.

The parties to the appeal are also entitled to appeal to the High Court against a decision of the Tribunal. The High Court may make whatever order it considers appropriate including confirming the decision of the Tribunal, setting aside its decision or ordering that the matter be remitted back to the Tribunal to be heard again.

## Likely future trends

Dillon Eustace has acted for a number of parties in appeals to IFSAT and from our experience the Tribunal offers an expeditious and effective avenue for parties affected by a decision to challenge and appeal the finding of the Central Bank.

The number of appeals brought to IFSAT has increased over the last number of years. In light of the increased regulatory and enforcement capabilities of the Central Bank this trend is likely to continue in the coming years.

**Dillon Eustace**  
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## DILLON EUSTACE

### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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