

May 2023

Updated Central Bank Procedures for Fitness and Probity Investigations, Suspensions and Prohibitions

Introduction

In April 2023, the Central Bank of Ireland ("**Central Bank**") published updated regulations and guidance for its Fitness and Probity ("**F&P**") investigations, suspensions and prohibitions procedures, which apply from 20 April 2023, namely the:

- Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations
 2023; and
- Fitness and Probity Investigations, Suspensions and Prohibitions: Guidance (April 2023)

(together, "the Updated Regulations and Guidance").

The updated procedures for F&P investigations, suspensions and prohibitions form part of a number of changes that are being introduced in order to give effect to the Central Bank's Individual Accountability Framework ("IAF"), which is intended to establish healthy cultures and effective governance in Irish regulated firms.

Underlying Legislation

The <u>Central Bank (Individual Accountability Framework) Act 2023</u> ("the IAF Act") has amended Part 3 of the <u>Central Bank Reform Act 2010</u> ("the 2010 Act") which governs the fitness and probity investigation, suspension, and prohibition of individuals performing controlled function ("CF") roles and pre-approved controlled function ("PCF") roles in regulated firms.

Pursuant to Part 3 of the 2010 Act, the Central Bank has power to conduct an investigation into the fitness and probity of CF and PCF roles where there is reason to suspect the individual's fitness and probity to perform the relevant function and where an investigation into the individual's fitness and probity is warranted.

Part 3 of the 2010 Act also provides for the issuing of suspension notices by the Central Bank ("Suspension Notices") to remove an individual from a CF (including a PCF) role for a limited period

and for the issuing of prohibition notices by the Central Bank ("Prohibition Notices") to prohibit an individual from performing a CF (including a PCF) role for a specified period or indefinitely.

The Updated Regulations and Guidance

The Updated Regulations and Guidance replace previous regulations and guidance issued by the Central Bank regarding F&P investigations, suspensions and prohibitions.

The Updated Regulations and Guidance supplement key changes arising from the amendments made to Part 3 of the 2010 Act by the IAF Act, including:

- i) Changes to the investigative procedure;
- ii) Changes to the issue of Suspension Notices and Prohibition Notices; and
- iii) The application of the F&P regime to holding companies.

Changes to the investigative procedure include the Central Bank's ability to investigate individuals who formerly performed CF roles within a regulated financial service provider within the period of six years immediately preceding the commencement of the investigation (subject to certain transitional provisions).

Changes to the Suspension Notices and Prohibition Notices include an increased limit for the initial duration of a Suspension Notice from 3 months to 6 months and the stipulation that Prohibition Notices will now only take effect when confirmed by the High Court or when agreed in writing (whereas under the old regime, Prohibition Notices were previously effective once served).

The Updated Regulations and Guidance also provide for the extension of the application of the F&P regime to individuals performing certain CF roles in holding companies of certain regulated firms. In the Central Bank's Consultation Paper CP153 (see our previous briefing here on this), the Central Bank highlighted that such an extension is to close an acknowledged gap in the current framework. However, further regulations to give effect to this particular measure are currently under review as part of the ongoing CP153 consultation procedure, which closes on 13 June 2023.

Transitional Arrangements

Part 7 of the IAF Act deals with transitional arrangements. The Central Bank has also issued guidance on such transitional arrangements in its Fitness and Probity Investigations, Suspensions and Prohibitions: Guide to Transitional Arrangements Arising from the Central Bank (Individual Accountability Framework) Act 2023 (April 2023). This applies to investigations already in being on 19 April 2023, the date on which the IAF Act commenced.

Conclusion

We will keep you updated on further developments relating to the IAF, however, in the meantime, if you have any queries in relation to the Updated Regulations and Guidance or the IAF in general, please contact your usual contact in Dillon Eustace LLP.

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