



April 2020

Quick Guide: The CBI's Regulatory Toolkit

Part 1: Directions

This is the first 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 issue directions, which is set out in Part 7 of the Act.

Who does the power apply to?

The CBI can give directions to a regulated financial service provider (“RFSP”) and to a related undertaking of a RFSP.

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 issue directions to a related undertaking of a RFSP, means that directions can be imposed on an RFSP's parent or subsidiary, even if the company is not a RFSP itself.

What directions can be made?

The CBI can direct the RFSP/related undertaking to take various actions including the following:¹

¹ For a full list of the directions which can be imposed, readers should refer to section 45 of the Act.

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- ▣ to suspend the provision of any financial service for a period of up to 12 months;
- ▣ to suspend the acquisition or disposal of any assets or liabilities for a period of up to 12 months;
- ▣ to raise and maintain such capital or other financial resources as specified in the direction;
- ▣ to modify its systems, controls or business practices; and
- ▣ to comply with a condition or requirement imposed under financial services legislation.

The CBI can also require the firm to notify specific third parties of the directions which have been imposed on it.

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

The CBI can only impose a direction on a firm if at least one of the circumstances set out in section 45(2) of the Act apply. These include the following:

- ▣ that the RFSP/related undertaking of the RFSP has become, or is likely to become unable, to meet its obligations to creditors or customers;
- ▣ that the RFSP or related undertaking of the RFSP is not maintaining or is unlikely to be in a position to maintain adequate capital or other financial resources;
- ▣ that the RFSP/related undertaking of the RFSP is conducting its business in a way which jeopardises or prejudices monies, securities or other investment instruments held or controlled by it on behalf of customers, and
- ▣ that the RFSP/related undertaking is acting in a way which prejudices the rights and interests of customers.

Can you appeal the imposition of a direction?

Yes – depending on the type of direction imposed, an application can be made either to the High Court or to the Irish Financial Services Appeals Tribunal (“**IFSAT**”) to have the direction set aside. If the direction is of a type set out in section 45(3)(a) or 45(3)(b) of the Act then the application to have it set aside should be made to the High Court. An appeal against any directions imposed under section 45(3)(c)-(g) should be appealed to IFSAT. In general the directions which can be appealed to the High Court are those where the CBI is directing the firm to suspend taking a particular course of action for a period of up to 12 months.

It is also worth noting that the CBI may decide to publish a direction. The format of publication is not specified in the Act, rather it is stated that the direction can be published in such manner as the CBI considers appropriate.

Commentary

The power to issue a direction can only be used if the CBI is satisfied that one of the circumstances set out in section 45(2) of the Act apply to the firm. Therefore the power to issue a direction will generally only be used in the most serious of circumstances, for example where the CBI has concerns about a RFSP's solvency, or perhaps where it has concerns about fraudulent activity at a firm.

Contact information

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