IRELAND - Update – Central Bank of Ireland Issues Prohibition Notice for Breach of the Fitness & Probity Regime

Executive Summary

On 27 September 2019, the Central Bank of Ireland ("CBI") published details of a prohibition notice issued to an individual pursuant to the Fitness and Probity regime (the "Prohibition"). The CBI issued the Prohibition following its determination that the individual provided false or misleading information to the CBI during their pre-approval control function ("PCF") application. The Prohibition restricts the individual from performing any control function within an Irish regulated financial services provider ("RFSP") for a period of two years.

Background

The Fitness and Probity regime requires individuals performing control functions in RFSPs to meet the CBI's Fitness and Probity Standards. Applicants for PCF roles (e.g. directors and other senior roles) must submit an individual questionnaire ("IQ") and receive CBI approval before commencing their position.

Prohibition Notice

The individual obtained PCF authorisation from the CBI. However, in their IQ and subsequent responses to CBI queries, the individual provided inaccurate information and ultimately the CBI determined, per the Prohibition notice, that the individual:

- "provided information which he knew or ought to have known was false and misleading".

The Prohibition notice further states:

"Honesty and integrity are explicit requirements for those seeking regulatory approval. This encompasses the fundamental requirement of truthfulness in an application for approval. The Central Bank is entitled to expect and insist on absolute candour and honesty and otherwise will not be in a position to fulfil the crucial gatekeeping function which is expected of it in its role of protecting both consumers and the financial system. An applicant for approval, seeking both the advantages and responsibilities for approval, must be taken to understand the unambiguous requirement for truthfulness, and candid and accurate information."

The CBI states the rationale for the Prohibition as being twofold. Firstly to demonstrate to the individual the seriousness of the infraction and to deter them from future similar behaviour; and secondly to demonstrate the gravity of providing false and/or misleading information to the CBI to other RFSPs, individuals performing and applicants for PCF roles, and the financial services industry as a whole.

It is also useful to note the CBI's determination of certain proposed mitigating factors put forward on behalf of the individual. Amongst other points, the CBI rejected the argument that the individual's cooperation with the CBI's investigation constituted a mitigating factor, noting that cooperation with the CBI is an expectation of a PCF.
Broader Context

The Prohibition further illustrates the CBI’s increasing focus on Fitness and Probity and individual conduct, following the circulation of a ‘Dear CEO’ letter on Fitness and Probity in April 2019 (see Walkers advisory here), the publication of a report on Behaviour and Culture of Irish Retail Banks in July 2018 and the proposed introduction of a Senior Executive Accountability Regime (see Walkers advisory here). In the past 24 months, the CBI has issued three six-figure fines to RFSPs in cases that included breaches of the Fitness and Probity regime.

RFSPs and individual applicants’ initial and ongoing Fitness and Probity obligations (including undertaking due diligence, maintaining records and other ongoing processes), as well as the imperative for absolute candour and honesty, should be understood and prioritised by RFSPs. These requirements should be built into the procedures, processes and the culture of RFSPs, and all applicants and relevant role holders should be made aware of their obligations.

Walkers

The Walkers regulatory, funds, employment and dispute resolution teams have extensive experience of advising RFSPs on the Fitness and Probity regime; including in the context of policy and framework development, PCF applications, entry and exit interviews, and representing RFSPs in Central Bank enforcement actions in relation to Fitness and Probity matters.

Walkers are ready to assist clients by:

1. Advising on the Fitness and Probity due diligence requirements;
2. Assisting with the IQ process and documentation required by the CBI during the approval process;
3. Aiding candidates in preparing for the interview stage for PCF roles;
4. Assisting with the development of Fitness and Probity policies, procedures and frameworks; and
5. Undertaking health check and remediation exercises of existing records and policies.

Contacts

If you have any queries in relation to the Fitness and Probity regime, please speak to your usual contact in Walkers or contact:

Eoin O’Connor
Partner, Head of Regulatory
T: +353 1 470 6664
E: eoin.oconnor@walkersglobal.com

Niall Esler
Partner, Regulatory
T: +353 1 863 8517
E: niall.esler@walkersglobal.com

Shane Martin
Of Counsel, Regulatory
T: +353 1 470 6673
E: shane.martin@walkersglobal.com

Conor Daly
Associate, Regulatory
T: +353 1 470 6684
E: conor.daly@walkersglobal.com

Bill Laffan
Associate, Regulatory
T: +353 1 863 8511
E: bill.laffan@walkersglobal.com

Nicholas Blake-Knox
Partner, Asset Management & Investment Funds
T: +353 1 470 6669
E: nicholas.blake-knox@walkersglobal.com

Jennifer Fox
Partner, Asset Management
T: +353 1 863 8531
E: jennifer.fox@walkersglobal.com

Sarah Maguire
Partner, Asset Management & Investment Funds
T: +353 1 470 6691
E: sarah.maguire@walkersglobal.com

Eimear Keane
Partner, Asset Management & Investment Funds
T: +353 1 470 6669
E: eimear.keane@walkersglobal.com

William Greensmyth
Of Counsel, Insolvency & Dispute Resolution
T: +353 1 470 6679
E: william.greensmyth@walkersglobal.com

Susan Catley
Partner, Employment
T: +353 1 863 8541
E: susan.catley@walkersglobal.com

Gavin Smith
Partner, Insolvency & Dispute Resolution
T: +353 1 470 6674
E: gavin.smith@walkersglobal.com

Disclaimer:
The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.