



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# **Fitness and Probity Investigations, Suspensions and Prohibitions**

Guide to Transitional Arrangements  
Arising from the Central Bank  
(Individual Accountability Framework)  
Act 2023

April 2023

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# Introduction

1. On 19 April 2023, the law changed in relation to fitness and probity investigations, suspensions and prohibitions. This document (the **Transitional Guidance**) explains the changes and describes the Central Bank's updated procedures.
2. The Transitional Guidance is not a definitive legal interpretation of any provision of an enactment or of Central Bank regulations. In case of doubt you should refer to the relevant legal provisions or seek legal advice, if required.

## Changes to the Legal Framework

3. The Central Bank (Individual Accountability Framework) Act 2023 (the **IAF Act**) was signed into law by the President on 9 March 2023.
4. Part 3 of the IAF Act, which was commenced by Order of the Minister for Finance on 19 April 2023 (the **commencement date**)<sup>1</sup>, makes changes to the Central Bank's fitness and probity regime under Part 3 of the Central Bank Reform Act 2010 (the **2010 Act**). These changes include changes to fitness and probity investigations, suspensions and prohibitions. An overview of the changes is included at **Appendix 1**.
5. The changes apply in full to all relevant procedures begun on or after the commencement date. The changes do not apply to procedures concluded before the commencement date.

## Ongoing Procedures

6. Generally speaking, where an investigation or related procedure was ongoing on the commencement date, having begun before that date, the changes made by the IAF Act do not apply to it.<sup>2</sup> However, certain exceptions to this general rule are set out in Part 7 of the IAF Act. These exceptions are explained below. The relevant provisions of Part 7 are included at **Appendix 2**.

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<sup>1</sup> Central Bank (Individual Accountability Framework) Act 2023 (Commencement of Certain Provisions) Order 2023 (S.I. No. 176 of 2023).

<sup>2</sup> Section 89(1) of the IAF Act.

## Investigations

### Discontinuing an Investigation

7. The IAF Act amends the 2010 Act to provide that the Central Bank<sup>3</sup> may discontinue an investigation.<sup>4</sup> The Central Bank has published guidance explaining this.<sup>5</sup>
8. By way of exception to the general rule that investigations that were ongoing on the commencement date are not affected, such investigations may be discontinued in accordance with the relevant new provisions.<sup>6</sup>

### Investigation reports

9. The requirements in relation to investigation reports have changed under the IAF Act.<sup>7</sup> The Central Bank has published guidance explaining investigation reports and the new requirements.<sup>8</sup>
10. By way of exception to the general rule that investigations that were ongoing on the commencement date are not affected, the new requirements in relation to investigation reports apply.<sup>9</sup> However, this is subject to the following:
  - When preparing the investigation report in such investigations, the Central Bank is not required to consider a statutory Notice of Investigation. This is because the 2010 Act did not, at the time when the investigation began (i.e. before the commencement date), require a Notice of Investigation. Such Notices will be required for investigations that begin after the commencement date<sup>10</sup>
  - When preparing an investigation report in such investigations, the Central Bank must consider any response or other submission by the person to whom the investigation relates that that person is entitled to make. This requirement is instead

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<sup>3</sup> In the context of fitness and probity investigations, the relevant officer of the Central Bank is the Deputy Governor (Financial Regulation), who may appoint other persons to perform his or her functions.

<sup>4</sup> Section 15 of the IAF Act inserts Section 25A(4) into the 2010 Act.

<sup>5</sup> Paragraphs 55 to 56 of our guidance on Fitness and Probity Investigations, Suspensions and Prohibitions (the **2023 Guidance**).

<sup>6</sup> Section 89(2) of the IAF Act.

<sup>7</sup> Section 25 of the IAF Act substitutes section 41 of the 2010 Act.

<sup>8</sup> Paragraphs 67 to 71 of the 2023 Guidance.

<sup>9</sup> Section 89(3) of the IAF Act.

<sup>10</sup> Section 25A(1) of the 2010 Act inserted by section 15 of the IAF Act.

of (but has similarities with) the new requirement to consider any response to the statutory Notice of Investigation in investigations that begin after the commencement date.

## Suspensions

### 11. Suspension notice procedures have changed under the IAF Act.<sup>11</sup>

The Central Bank has published guidance explaining suspension notices and the amended procedures.<sup>12</sup>

### 12. Where the Central Bank has issued a suspension notice before the commencement date, the relevant changes made by the IAF Act do not apply to it. If, however, the Central Bank issues a suspension notice after the commencement date, the changes made by the IAF Act do apply to it even if the related investigation or prohibition notice procedure began before the commencement date.

## Prohibitions

### 13. Prohibition notice procedures have changed under the IAF Act.<sup>13</sup>

The Central Bank has published guidance explaining prohibition notices and the amended procedures.<sup>14</sup>

### 14. Where the Central Bank has issued a prohibition notice before the commencement date but the prohibition notice has not taken effect before that date, the relevant changes made by the IAF Act apply to it.<sup>15</sup>

### 15. Where a prohibition notice took effect before the commencement date, the changes made by the IAF Act do not apply to it.<sup>16</sup> However, a new statutory procedure permitting applications to the High Court to vary or revoke a prohibition notice that was previously confirmed by the Court applies from the commencement date.<sup>17</sup>

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<sup>11</sup> Sections 16 to 21 of the IAF Act amend sections 26 to 31 of the 2010 Act.

<sup>12</sup> Paragraphs 57 to 66 of the 2023 Guidance.

<sup>13</sup> Sections 27 to 31 of the IAF Act amend sections 43 to 46 of the 2010 Act.

<sup>14</sup> Paragraphs 72 to 91 of the 2023 Guidance.

<sup>15</sup> Section 90(1) of the IAF Act.

<sup>16</sup> Section 90(2) of the IAF Act.

<sup>17</sup> Section 45A of the 2010 Act inserted by section 30 of the IAF Act.

16. If a prohibition notice issues after the commencement date, the changes made by the IAF Act apply to it even if the related investigation began before the commencement date.

### Requirements for Independence

17. The IAF Act introduces new statutory requirements concerning the independence of fitness and probity investigations and related decisions.<sup>18</sup> Generally speaking, these new requirements apply from the commencement date to procedures that were ongoing on that date. However, certain transitional arrangements under Part 7 of the IAF Act apply. In summary:

- A person who forms the opinion necessary to commence an investigation cannot have any subsequent involvement in the investigation if that would affect the independence of the investigation. However, this new statutory requirement does not apply if the relevant opinion was formed before the commencement date<sup>19</sup>
- A person who issues a suspension notice cannot confirm the suspension notice. However, this new statutory requirement does not apply if the suspension notice issued before the commencement date<sup>20</sup>
- A person who has been involved in an investigation cannot perform any function in connection with the imposition of a prohibition. However, this new statutory requirement does not apply to involvement before the commencement date<sup>21</sup>
- The Central Bank may not rely on a contract of or for services with a person carrying out decision making functions in relation to suspension or prohibition in any way that may affect their independence in the exercise of that function.

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<sup>18</sup> Section 35 of the IAF Act amends section 52 of the 2010 Act. Section 36 of the IAF Act inserts section 52A into the 2010 Act.

<sup>19</sup> Section 91(a) of the IAF Act.

<sup>20</sup> Section 91(b) of the IAF Act.

<sup>21</sup> Section 91(c) of the IAF Act.

# Changes to Regulations and Guidance

18. The Central Bank has issued updated regulations and guidance on fitness and probity enforcement procedures to take account of the changes introduced by the IAF Act:

- Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023<sup>22</sup> (the **2023 Regulations**)
- Fitness and Probity Investigations, Suspensions and Prohibitions: Guidance (April 2023) (the **2023 Guidance**).

19. The 2023 Regulations and 2023 Guidance, which are based on the pre-existing regulations<sup>23</sup> and guidance<sup>24</sup>, include changes necessary to align with the IAF Act and ancillary and incidental changes. The 2023 Regulations and 2023 Guidance, and the pre-existing regulations and guidance, are available on the Central Bank's website.<sup>25</sup>

20. The 2023 Regulations and 2023 Guidance apply to all fitness and probity enforcement procedures begun on or after 20 April 2023. They do not apply to procedures that concluded before that date.

21. The 2023 Regulations and 2023 Guidance also apply to all fitness and probity enforcement procedures that were ongoing on 20 April 2023. However, as the savings and transitional provisions of Part 7 of the IAF Act apply (as described above and set out in **Appendix 2**), the 2023 Guidance must be read together with the relevant provisions of Part 7 and this Transitional Guidance.

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<sup>22</sup> S.I. No. 190 of 2023.

<sup>23</sup> Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012 (S.I. No. 56 of 2012).

<sup>24</sup> Guidance on Investigations under Part 3 of the Central Bank Reform Act 2010 (2011).

<sup>25</sup> <https://www.centralbank.ie/regulation/how-we-regulate/fitness-probity/investigations-enforcement>

# Appendix 1

## Overview of Changes to Part 3 of 2010 Act

| Change                                                              | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Investigation of individuals who formerly performed CF roles</b> | The Central Bank can now investigate an individual who formerly performed a controlled function (CF) role provided that they performed the role within the shorter of the following periods: (a) the period since 19 April 2023 (the commencement date of the relevant statutory provision), and (b) the 6 years before the date on which an investigation is commenced.                                                                                                                                  |
| <b>Commencement of investigation</b>                                | A new statutory procedure has been introduced for giving notice of investigations.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Suspension</b>                                                   | <p>The limit for the initial duration of a suspension notice issued by the Central Bank has increased from 3 months to 6 months.</p> <p>Suspension notices confirmed by the Central Bank may now be appealed to the Irish Financial Services Appeals Tribunal.</p> <p>The period for which the High Court may extend a suspension notice has increased from 3 months to 6 months.</p> <p>The Central Bank may make subsequent applications to the High Court to further extend the suspension notice.</p> |
| <b>Investigation report</b>                                         | The statutory procedure for investigation reports has been changed to provide for the preparation and service of a draft report followed by a final report.                                                                                                                                                                                                                                                                                                                                               |
| <b>Discontinuing an investigation</b>                               | The Central Bank may discontinue an investigation for reasons to be stated in a notice.                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Prohibition</b>                                                  | Prohibition notices, which previously took effect on service, will now take effect only when confirmed by the High Court or agreed in writing.                                                                                                                                                                                                                                                                                                                                                            |
| <b>Varying / revoking prohibition</b>                               | A procedure has been introduced allowing the Central Bank or the subject to apply to the High Court for an order varying or revoking a prohibition notice that was previously confirmed by the Court.                                                                                                                                                                                                                                                                                                     |
| <b>Regime extended to certain holding companies</b>                 | The fitness and probity regime will (upon the Central Bank issuing regulations) apply to individuals performing certain CF roles in holding companies of certain regulated firms.                                                                                                                                                                                                                                                                                                                         |
| <b>Enhanced independence requirements</b>                           | Certain requirements have been introduced to ensure the independence of an investigation and associated decision-making procedures.                                                                                                                                                                                                                                                                                                                                                                       |



# Appendix 2

## Savings and Transitional Provisions under Part 7 of IAF Act

### Interpretation (Part 7)

**88.** A word or expression that is used in this Part and is also used in Part IIIC of the Act of 1942 has (unless the context otherwise requires) the same meaning in this Part as in Part IIIC of that Act.

### Investigations and suspension notices under Chapter 3 of Part 3 of Act of 2010

**89.** (1) In relation to an investigation under Chapter 3 of Part 3 of the Act of 2010, notice of which was given to the person to whom the investigation relates before the commencement of section 15, that Chapter continues to apply, subject to subsections (2) and (3), as if Part 3 of this Act had not been commenced.

(2) Subsection (4) of section 25A of the Act of 2010 as inserted by section 15 applies in relation to an investigation referred to in subsection (1) which is discontinued on or after the commencement of section 15.

(3) Section 41 of the Act of 2010 as substituted by section 25 applies in relation to an investigation referred to in subsection (1) on and after the commencement of section 25—

(a) with the omission of paragraph (a) of subsection (1) of the said section 41, and

(b) with the substitution of the following paragraph for paragraph (c) of the said subsection (1): “(c) any response or other submission by the person to whom the investigation relates that that person is entitled to make,”.

(4) In relation to a suspension notice issued under section 26 of the Act of 2010 before the commencement of a provision of sections 16 to 21, Chapter 3 of Part 3 of that Act continues to apply as if that provision had not been commenced.

### Prohibition notices under section 43 of Act of 2010

**90.** (1) A prohibition notice issued under section 43 of the Act of 2010 before the date of commencement of section 27, but which has not taken effect before that date, shall be treated on and after that date as if issued under section 43 of that Act as amended by section 27.

(2) In relation to a prohibition notice issued under section 43 of the Act of 2010 which has taken effect before the commencement of section 27, Chapter 4 of Part 3 of that Act continues to apply as if sections 27 to 29 and section 31, had not been commenced.

### **Continuing functions under section 52 of Act of 2010**

**91.** (1) In subsection (4) of section 52 of the Act of 2010 as amended by section 35—

- (a) paragraph (a) does not apply where the person concerned formed the opinion referred to in that paragraph before the commencement of section 35,
- (b) paragraph (b) does not apply where the person concerned performed the function under section 26 of the Act of 2010 referred to in that paragraph before the commencement of section 35, and
- (c) paragraph (c) does not apply where the person concerned was involved in the investigation referred to in that paragraph before the commencement of section 35.



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