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## Administrative Sanctions Settlement Procedure

### Introduction

The Central Bank's ("the Bank") 2013 updated Outline of the Administrative Sanctions Procedure (the "2013 Guidelines") was introduced to advise and assist a regulated entity faced with investigation by the Bank.

The Bank received powers in August 2004 to impose administrative sanctions and to enter into settlement agreements arising out of contraventions by regulated financial service providers and also by persons concerned in the management of regulated financial service providers arising out of certain prescribed contraventions.

The 2013 Guidelines were introduced to reflect the developments in the administrative sanctions procedure. It has become increasingly clear that since the Bank received their powers in August 2004 they have been happy to agree settlements with regulated entities rather than going through a full inquiry with resulting sanctions on the regulated entity. In fact, every investigation into prescribed contraventions has to date resulted in a settlement rather than full blown administrative sanctions.

This article has been written to give more detailed information on the settlement process due to the prominent role it has played in the procedure to date. The process has also been afforded more clarity in the 2013 Guidelines, including details on settlement discounts. Therefore, it is important for regulated entities to be aware of the rules governing the settlement process in particular should they find themselves subject to the administrative sanctions procedure.

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## Central Banks' approach to settlement agreements

If the Bank suspects on reasonable grounds that a regulated entity is committing or has committed a prescribed contravention, the Bank may enter into a settlement agreement with that entity. This agreement must be in writing, and is binding upon both parties. The Bank considers that:

*"in appropriate cases, it may be in the public interest for the Administrative Sanctions Procedure cases to settle, and settle as early as possible."*<sup>1</sup>

All cases thus far have been settled; indicating that the Bank's preference is to engage with the settlement process if at all possible.

The Bank provides the following justifications for its settlement procedure:

- ▣ a means of achieving an early resolution of the matter;
- ▣ efficient use of the Bank's resources;
- ▣ transparency – details of the case are published through publicity statements; and,
- ▣ the costs and administrative burden of the extended sanctions process are avoided.<sup>2</sup>

## Early settlement discount scheme

There is of course no obligation on the Bank to enter into the settlement procedure. However, as they have shown such a willingness to engage in the process, it is important that all regulated entities are familiar with the settlement process so they are prepared to engage as efficiently as possible with the Bank.

This is primarily because the Bank offers discounts on sanctions for early engagement with the settlement procedure. This discount scheme was in place before 2013, but was only effectively codified with the introduction of the 2013 Guidelines.

The discount scheme operates over two stages:

- ▣ Stage One

Once an investigation has commenced, the Bank may issue a letter offering the possibility of settlement.

<sup>1</sup> Central Bank, *Outline of the Administrative Sanctions Procedure 2013*, 4.2.1

<sup>2</sup> Central Bank, *Outline of the Administrative Sanctions Procedure 2013*, 4.2.2

Stage one of the discount scheme is from the issuance of this letter for a period which is indicated in the settlement letter, this will vary on a case by case basis. If a settlement is arrived at within this timeframe, the percentage discount that will apply is anything up to a maximum of 30%

 Stage Two

From the end of stage one until the date on which a notice of inquiry is issued by the Bank the stage two discount will apply. This discount is anything up to a maximum of 10%

In assessing how much of a discount to give regulated entities, the Bank will have regard to factors such as their history of sanctions and how co-operative the entity has been. The opportunity to receive a substantial discount within stage one of the settlement process should be assessed by companies in the face of an inquiry by the Bank on a case by case basis. As all cases thus far have been settled, it appears that companies have to date taken a commercial decision by indicating to the Bank that they will co-operate with them.

## Settlement Meeting and Agreement

If the company agrees to meet with the Bank, a settlement meeting will then be arranged between the Bank and the regulated entity. The Bank will write to the regulated entity notifying it of the sanction/s which it feels are appropriate. There is an onus on the party being investigated to openly disclose all material facts regarding their suspected contraventions.

The settlement agreement is conditional on this fact and the regulated entity should be aware that if they do not comply with this requirement the settlement agreement could be rescinded.

If an agreement is concluded it will include:

-  admissions to prescribed contraventions;
-  a statement that contraventions have ceased or are being addressed;
-  a statement from the regulated entity that it has disclosed all relevant information;
-  the sanctions agreed upon;
-  the discount for early settlement;
-  a detailed public statement; and,
-  any other relevant terms.

It is important that the regulated entity complies with the terms of the agreement. The Bank can apply to the High Court seeking a compliance order if they do not.

Another important part of the settlement procedure is the agreement that the Bank will release a public statement containing the name of the company, the contraventions, the facts of the case and the sanctions imposed. The settlement agreement itself is confidential, but the publicity statement is not.

These statements are generally reported on in the media and published on the Bank's website. The Bank considers these to be an important part of the settlement agreement process and as such they are a necessary element to any settlement.

## Effect of Entering into a Settlement Agreement

The company will generally have to pay a monetary penalty for its contravention, discounted as a result of the agreement if settled in the first two stages. The agreement will form part of the company's compliance record, which may influence the Bank's decisions in any further enforcement actions.

Any individual's involvement in a settlement agreement may be considered by the Bank when they are assessing a subsequent application as part of their fit and proper person test to work in a managing role in another regulated entity.

Clearly, companies should endeavour to ensure that they are in full compliance with all Central Bank regulations and attempt to avoid entering into practices which may result in a Central Bank investigation. However, if you are subject to such an investigation, our regulatory and administrative sanctions unit is experienced in these matters and can help guide you through the process.

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