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Central Bank responds to the Law Reform Commission's "Regulatory Enforcement and Corporate Offences" Issues Paper

The Central Bank of Ireland (the "**Central Bank**") recently published its response to the Law Reform Commission's Issues Paper on "Regulatory Enforcement and Corporate Offences". The paper sought views from interested parties on various matters including whether the supervisory and enforcement powers of the State's main financial and economic regulators are adequate.

It is clear from the Central Bank's response that it wants to put individual accountability at the core of financial regulation. Although the Central Bank already has significant powers which can be applied to individuals it would like new reforms to be introduced which would make it more difficult for a senior manager to deny responsibility for any wrongdoing occurring within his/her remit and also for certain of its existing powers as regards individuals to be increased. Some of these recommendations are outlined below.

Suggested changes to existing powers

- ▣ *Creation of a Senior Managers and Certification Regime:* the Central Bank has proposed that a new regime modelled on the Senior Managers and Certification Regime in the UK be introduced in Ireland. This would require each senior manager to prepare a statement of responsibilities, clearly identifying the matters within the relevant firm for which he/she is responsible. Such a reform would arguably make it easier for the Central Bank to pursue senior managers and

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more difficult for a senior manager to argue at a later stage that he/she was not responsible for the area in which any wrongdoing occurred.

- ▣ *Ability to publish PCF refusals:* the Central Bank has suggested that in order to further strengthen its gatekeeper role it should be given the power to publish details of where it has refused to approve the appointment of an individual to a pre-approval controlled function.
- ▣ *Broaden the scope of fitness and probity investigations:* the Central Bank has recommended that the scope of its fitness and probity regime be broadened so as to enable it to investigate individuals who previously performed controlled functions.
- ▣ *Extend the time frame of suspension notices:* currently an individual can be suspended for up to six months while an investigation into his/her fitness and probity is ongoing. The Central Bank has proposed that this time frame be increased due to the intricacies of carrying out fitness and probity investigations.

Other comments

The Central Bank also provided other comments which were not specific to its own role as follows:

- ▣ *White collar crime:* the Central Bank said it would support the creation of a dedicated division within an existing criminal agency to investigate white collar crime. It suggested that individuals with relevant skills could be seconded to such a division in order to provide support in complex areas of investigation and prosecution.
- ▣ *Recklessly causing a firm to fail:* the Central Bank appeared to endorse the creation of a new criminal offence of recklessly causing a financial institution to fail where it can be shown that there was egregious recklessness in risk-taking by those who were in charge of the failed financial firm.
- ▣ *Specialised body to hear regulatory appeals:* the Central Bank agreed that the creation of a specialised body to hear regulatory appeals would be advantageous, particularly if it was set up as a specialist division of the High Court. This would simplify the process for both appellants and regulatory authorities as presently there is no streamlined process for making regulatory appeals in Ireland.

Conclusion

The Central Bank's comments reflect what we are seeing in practice, namely an increased regulatory focus on the individual, resulting in more frequent supervisory and enforcement led interviews both in a fitness and probity context and under the Administrative Sanctions Procedure.

If some of the suggested changes were implemented senior managers would be more exposed to personal action perhaps resulting in them thinking twice about taking up certain roles or at least

checking the terms of their directors and officers liability insurance.

It remains to be seen what reforms may be implemented as a result of the Central Bank's and other interested parties' comments.

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