



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Settlement Agreement between the Central Bank of Ireland
and Mr Tadhg Gunnell**

Central Bank of Ireland disqualifies Mr Tadhg Gunnell for a period of 10 years

On 20 May 2015, on the basis of a settlement agreement, the Central Bank of Ireland (the “Central Bank”) disqualified Mr Tadhg Gunnell (“Mr Gunnell”), a former general partner of Bloxham (In Official Liquidation) (the “Firm”) for 10 years from being a person concerned in the management of a regulated financial service provider and reprimanded him for his actions when Head of Finance and Compliance of the Firm.

As Head of Finance and Compliance, the actions of Mr Gunnell related to the misrepresentation of the Firm’s true regulatory capital position to the Central Bank between December 2007 and May 2012, specifically in the context of the obligations on the Firm to meet minimum regulatory capital requirements.

The Firm went into voluntary liquidation in May 2012.

Mr Gunnell oversaw certain financial irregularities in the Firm’s accounts that contributed to its overstated regulatory capital position. Certain of the capital contributions to the Firm were misrepresented as being unencumbered when third parties had pre-existing rights over the monies making them ineligible regulatory capital. In addition, the Central Bank adjudged Mr Gunnell to have failed in his responsibility to ensure that adequate systems and controls relating to the calculation and reporting of regulatory capital were in place. Mr Gunnell has admitted his actions as part of the settlement agreement between the Central Bank and Mr Gunnell.

The Central Bank considered that the actions of Mr Gunnell also merited a monetary penalty of €105,000 being imposed on him. However, on the basis that Mr Gunnell was adjudicated bankrupt by the High Court on 26 January 2015, this monetary penalty has been waived.

The Central Bank's Director of Enforcement, Derville Rowland, has commented as follows:

"The Central Bank expects that persons concerned in the management of regulated entities should act to the highest standards within the industry. Where any person involved in managing our regulated financial service providers falls short of these standards, enforcement action can be expected to follow against that person.

The sanctions imposed on Mr Gunnell reflect the seriousness of his actions. Mr Gunnell cannot act as a person concerned in the management of a regulated financial service provider for 10 years. The investigation into Mr Gunnell's role has been complex and detailed in nature due to the manner in which the Firm's regulatory capital position was misrepresented to the Central Bank.

The Central Bank expects compliance with the capital requirements legislation which is at the core of the stability of our financial system. Under the legislation, all investment firms are required to hold sufficient levels of regulatory capital to cushion the firm against potential losses. It is essential that firms meet these requirements at all times, so that consumers, creditors and other stakeholders can have confidence as to the soundness of their financial position.

The regulatory returns submitted to the Central Bank, on a periodic basis, enable the Central Bank to monitor the compliance of firms with their regulatory capital obligations. Any misrepresentation of the regulatory capital position in these returns inhibits the Central Bank in performing our fundamental regulatory role."

The Central Bank's Director of Markets, Gareth Murphy, has commented as follows:

"Clear and accurate financial reporting is a key pillar of the regulatory framework. Without it, consumers and investors cannot have confidence in the financial services industry. Today's settlement sends out a clear signal that the Central Bank will use the full range of our powers to ensure consumer and investor confidence."

Background

Following the Central Bank's establishment of a definite line of enquiry into the Firm's regulatory capital, the partners of the Firm informed the Central Bank on 24 May 2012 of financial irregularities at the Firm. On 25 May 2012, the Central Bank imposed a direction on the Firm to cease all regulated activities with immediate effect.

Following a decision made at a meeting of the Firm's partners, the Firm petitioned the High Court on 31 May 2012 to wind up the Firm. An Official Liquidator was subsequently appointed on 25 June 2012.

Client assets were held by a third party.

Central Bank Investigation

Following the direction imposed by the Central Bank on the Firm on 25 May 2012 to cease all regulated activities and the Firm's subsequent decision to apply to be put into liquidation, the Central Bank commenced an extensive investigation into the composition of the Firm's regulatory capital and the accuracy of information submitted to the Central Bank in regulatory returns from December 2007 to May 2012.

Under the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006)(as amended)¹, investment firms were required to hold, on an ongoing basis, a minimum level of regulatory capital and also to have certain levels of regulatory capital to absorb losses that may arise due to market conditions or other events. This legislation also required investment firms to have adequate internal control mechanisms and administrative and accounting procedures in place to provide the Central Bank with all the information necessary to assess compliance with relevant capital adequacy legislation. The European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)(as amended) require investment firms to ensure that accounting policies and procedures are in place to enable the delivery of true and fair financial reports to the Central Bank.

¹ S.I. No. 660 of 2006 was revoked by Regulation 161 of European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) with effect from 31 March 2014.

In the context of the above regulatory requirements on the Firm and arising from the Central Bank's investigation, Mr Gunnell has admitted the following findings of the Central Bank against him:

- incorrectly accounting for the aforementioned financial irregularities in the accounts;
- misrepresenting certain partner capital contributions as unencumbered capital;
- misrepresenting the regulatory capital position of the Firm in regulatory returns submitted to the Central Bank from December 2007 to May 2012, thereby misleading the Central Bank;
- failing in his responsibility as Head of Finance and Compliance to have adequate internal control mechanisms and administrative and accounting procedures in place to provide the Central Bank with all the information necessary to assess compliance with relevant capital adequacy legislation; and
- failing in his responsibility as Head of Finance and Compliance to ensure that accounting policies and procedures were in place to enable the delivery of true and fair financial reports to the Central Bank.

Penalty Decision Factors

In deciding the appropriate penalty to impose, the Central Bank considered the following matters:

- the seriousness with which the Central Bank views non-compliance with regulatory capital reporting obligations, as it impacts upon the ability of the Central Bank to monitor Firms;
- the nature of Mr Gunnell's actions and time period during which they occurred; and
- Mr Gunnell fully cooperated during the investigation and entered into a settlement agreement with the Central Bank under its Administrative Sanctions Procedure.

While the Central Bank investigation into the Firm is ongoing, the investigation against Mr Gunnell is now closed.

- End -

Notes to Editors:

1. The period of disqualification takes effect from 6 June 2012.
2. The Central Bank's power to disqualify a person concerned in the management of a regulated financial service provider is set out in Section 33AQ Central Bank Act 1942, as amended.
3. The liquidation of the Firm is on-going under the guidance of the Official Liquidator.
4. Since this investigation commenced, new obligations and enhanced sanctions came into force under S.I. No. 158 of 2014 and the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014). These include administrative and criminal sanctions for a natural person or a body corporate/institution providing false, misleading or inaccurate information to the Central Bank.

S.I. No. 158 of 2014 introduces new obligations to provide accurate and complete information to the Central Bank in relation to compliance with obligations to meet own funds requirements as set out in EU Regulation 575/2013.

The administrative sanctions under S.I. No. 158 of 2014 for failing to provide such information or for providing incomplete and inaccurate information may include, amongst other things, a civil fine of up to €5,000,000 for a natural person. In addition, this legislation makes it a criminal offence for any person or a body corporate to knowingly provide false, misleading or inaccurate information to the Central Bank. The criminal sanctions in relation to these offences may include, on summary conviction, a fine of up to €5,000 and / or imprisonment of up to 12 months. If found guilty of an offence on indictment the sanctions include a fine of up to €250,000 and / or imprisonment of up to three years.

Other sanctions are available under S.I. No. 159 of 2014 for providing false, misleading or inaccurate information in relation to, *inter alia*, own funds, financial information, all forms of encumbrance of assets, and large exposures.

These provisions came into force after the events giving rise to the current settlement agreement, so are not applicable in the present case.